PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 5 February 2009

(Extract from book 1)

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Standing Committee on Finance and Public Administration — Mr Barber, Ms Broad, Mr Guy, Mr Hall, Mr Kavanagh, Mr Rich-Phillips and Mr Viney.

Standing Orders Committee — The President, Mr Dalla-Riva, Mr P. Davis, Mr Hall, Mr Lenders, Ms Pennicuik and Mr Viney.

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Electoral Matters Committee — (*Council*): Ms Broad, Mr P. Davis and Mr Somyurek. (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson.

Environment and Natural Resources Committee — (*Council*): Mrs Petrovich and Mr Viney. (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh.

Family and Community Development Committee — (*Council*): Mr Finn, Mr Scheffer and Mr Somyurek. (*Assembly*): Mr Noonan, Mr Perera, Mrs Powell and Ms Wooldridge.

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Rural and Regional Committee — (*Council*) Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels. (*Assembly*) Ms Marshall and Mr Northe.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr Eideh, Mr O'Donohue, Mrs Peulich and Ms Pulford. (*Assembly*): Mr Brooks, Mr Carli, Mr Jasper, Mr Languiller and Mr R. Smith.

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Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

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Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William	Southern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
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Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Vogels, Mr John Adrian	Western Victoria	LP

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Thursday, 5 February 2009

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.34 a.m. and read the prayer.

PETITION

Following petition presented to house:

Planning: Bayside villages

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council our strong appreciation and great affection for Bayside's villages. These villages include:

Church and Bay streets, Brighton

Hampton Street, Hampton

Sandringham village

and are a crucial part of what makes Bayside a fantastic place to live in, visit and experience.

Your petitioners believe that all efforts should be made to protect the special character and amenity of Bayside's villages. The future of Bayside's villages is best determined and safeguarded by Bayside City Council who, following sentiments and wishes of local residents, believe limiting the height and nature of development in and around these villages is a crucial step in preserving them as is proposed in amendment C58 to the Bayside planning scheme.

Your petitioners therefore request that the Minister for Planning authorise amendment C58 to the Bayside planning scheme to enable statutory procedures for public exhibition and independent panel review of the amendment proposals to be commenced.

By Ms PENNICUIK (Southern Metropolitan) (166 signatures).

Laid on table.

PAPERS

Laid on table by Clerk:

Gambling Regulation Act 2003 — Report of the Gambling and Lotteries Review Panel to the Minister for Gaming in Relation to the Review of the Second Phase of the Regulatory Structure and Associated Arrangements for the Operation of Gaming Machines, Wagering, Approved Betting Competitions and Club Keno and the Funding of the Racing Industry that are to apply after 2012.

Statutory Rule under the Crimes Act 1958 — No. 1.

BUSINESS OF THE HOUSE

Adjournment

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the Council, at its rising, adjourn until Tuesday, 24 February.

Motion agreed to.

MEMBERS STATEMENTS

Australia Day: Eastern Metropolitan Region awards

Mr ATKINSON (Eastern Metropolitan) — I wish to place on record my congratulations to a number of awardees in the Australia Day awards: James Bourke of Boronia, Norman Dalton of Balwyn, Rodney Arambewela of Mont Albert North, Ian Haskins of Forest Hill, Kenneth Jacobs of Wantirna, Ivan Kayne from Donvale, Chee Seong from Box Hill North, Bryan Martin from Blackburn, Alexander Rickard from Wantirna, Leigh Wigglesworth from Balwyn, Elizabeth Wilkes from Doncaster East, Gregory Esnouf from Blackburn South and Garry Watson from Croydon. All of these people have distinguished themselves in a range of areas of service to the community.

Very often we find it easy as Australians to recognise people who are great sportspeople, actors or actresses — people who have a measure of celebrity in the community — but there are thousands upon thousands of unsung heroes who go about their work in the community, trying to make the lives of others better. The contribution of these people is very much worthy of recognition through the Australia Day awards.

It has been indicated to me that there is a need to generate more nominees for future awards, and I certainly hope people take the opportunity of recognising some of our heroes in the community in the future.

Planning: Bayside villages

Ms PENNICUIK (Southern Metropolitan) — This morning I presented a petition signed by 166 citizens regarding the Bayside planning scheme amendment C58. There were a further approximately 1670 signatures on a petition that was not worded in the correct format but was instead addressed to the Minister

for Planning and was not able to be presented. The petition reads:

> The undersigned residents of and visitors to the municipality of Bayside register our names and email addresses and express our strong appreciation and great affection for Bayside's villages. These villages include Church and Bay streets, Brighton; Hampton Street, Hampton; Sandringham Village and are a crucial part of what makes Bayside a fantastic place to live in, visit and experience.
>
> We believe that all efforts should be made to protect the special character and amenity of Bayside's villages. The future of Bayside's villages is best determined and safeguarded by Bayside City Council who, following sentiments and wishes of local residents, believe limiting the height and nature of development in and around these villages is a crucial step in preserving them.

I will forward the petitions to the minister on behalf of the signatories from the city of Bayside.

Water: small block irrigators

Ms BROAD (Northern Victoria) — Yesterday the federal Minister for Climate Change and Water, Penny Wong, and the Victorian water minister, Tim Holding, announced that Victorian irrigators can now apply for the Rudd government's small block irrigators exit grant package. This means that eligible irrigators in Victoria in the Murray-Darling Basin on farms of 15 hectares or less can apply for grants up to $150 000 plus $20 000 in other transitional assistance on condition that they sell their water entitlement to the commonwealth.

A number of Victorian farmers, particularly in the Sunraysia region, have expressed interest in the package. As Minister Holding has said, although it is always unfortunate to see irrigators moving away from farming, this exit package will allow small block irrigators to sell their water rights while staying on their land. Importantly it means irrigators impacted by drought and climate change can remain in their homes, many of which have been in the family for generations, and continue to be part of the local community.

Interested irrigators need to submit an application form to Centrelink promptly to allow an assessment of eligibility for the program. Small block irrigators who intend to apply must do so by 30 April 2009 to ensure they can take advantage of this program.

I wish to record my thanks to both ministers for their efforts to ensure that small block irrigators in my electorate have access to assistance in very tough times.

Planning: Premier's comments

Mr GUY (Northern Metropolitan) — Whether it was a deliberate or an inadvertent slip, yesterday the Premier made an extraordinary comment. In launching his latest planning panic, to which I note he again brought along his largest handbag — the Minister for Planning — he stated that the government and the Victorian Civil and Administrative Tribunal (VCAT) would work together to fast-track government policy.

The PRESIDENT — Order! It is not appropriate for Mr Guy to refer to a minister of the Crown in that fashion. I ask him to withdraw the handbag comment.

Mr GUY — I withdraw.

As I said, you could forgive the planning minister for not understanding the doctrine of the separation of powers, but there is no way you could forgive the Premier for not understanding that doctrine. The Premier's statement yesterday was an enormous breach of the separation of powers. VCAT was established and remains to this day an independent civil justice tribunal. It is where Victorians go to have disputes heard and resolved. While some of its decisions are questioned by many in the community, even by me on some occasions, it is a body that should not be politicised.

VCAT is not there to implement government policy or fast-track developments which may be proposed by Labor mates. It is better to judge cases on their merit and to make appropriate decisions. It is not there to implement government policy, as the Premier is now stating. This is the first time that the state government has actively sought to influence the outcome of independent planning matters heard in VCAT. Victorians will have a number of questions to ask about the independence of this civil justice tribunal as a result of the Premier's statements.

We will no longer know whether there are checks and balances to prevent a corrupt, paper bag, fast-track planning approval process becoming rampant in Victoria as a result of this Premier's arrogant, dictatorial style.

Road safety: yellow card initiative

Mr EIDEH (Western Metropolitan) — One of the terrible things about what is otherwise the magic of the Christmas and New Year season is the terrible and heart-wrenching toll of human lives on our roads. These are not just statistics, they are not only numbers: they are people dearly loved by someone. They are persons who could have lived for many more years had it not been for tragedy on our roads.

That is why I strongly support the yellow card scheme announced by the then Acting Premier and member of the other place, Attorney-General Rob Hulls, in

mid-January. Indeed that is why I will support any positive attempt to reduce our road toll as far as is humanly possible. This is why I get upset when I see bad behaviour on our roads, with people risking their lives and the lives of others.

While I will never accuse younger Victorians of being the worst drivers in our state, the fact is that they make up far more of the road toll than do other age groups on our society. Sadly one in four deaths on our roads will be of a person under 25 even though they are only one-seventh of the population. This scheme aims to utilise the friendship and trust of other young people to help keep our youth alive, to help keep them safe.

In world-class football or soccer a yellow card is a warning of bad behaviour. Hopefully that message will be passed on with this program, and I am certain that every member of this house would also hope it is successful.

Aviation industry: open skies policy

Mr D. DAVIS (Southern Metropolitan) — My matter today concerns the important article in today's *Age* by Sally Capp, the chief executive of the Committee for Melbourne, about the need for, as I termed it, an open skies policy for Victoria and for Australia. I know this is something that has wide agreement in Victoria. Melbourne Airport in particular plays a key role as a piece of state infrastructure, and Avalon has increasingly added to that. But the regulated situation with international aviation works seriously against Victoria's, and I would argue Australia's, benefit, and I certainly would welcome any step that is taken to liberate or liberalise the rules that surround international aviation.

Hon. M. P. Pakula — We've been saying that for years.

Mr D. DAVIS — Indeed, Mr Pakula, and — through the Chair — your former industry minister was stung into action when I wrote an article in the *Australian Financial Review* in December 2006.

The federal government needs to do a lot more to liberalise aviation policy, and I think that statement would achieve broad agreement across the Victorian community. The two key drivers should be safe planes and slots for planes to land, and beyond that it should be left to operators to come into Victoria. This will boost our economy, and I congratulate Sally Capp on putting this in print today.

Economy: federal stimulus package

Mr SOMYUREK (South Eastern Metropolitan) — I rise to commend the Rudd Labor government for the stimulus packages it has released over the last six months. Whilst the rest of the developed world's economies proceed to contract at a rapid rate, the Victorian economy, thanks to the first stimulus package, grew by 3.9 per cent compared to the same time last year. I hope common sense prevails and the federal opposition parties do not obstruct the progress of the latest stimulus package announced by the Rudd government.

Economy: credit ratings

Mr SOMYUREK — On another matter, I commend Treasurer John Lenders for managing to maintain Victoria's AAA credit rating during these times of global financial turmoil. This strong financial position is the result of a decade of disciplined financial management and comes at a time when the Brumby government is delivering the biggest tax cuts in a decade and record levels of investment in infrastructure. Moody's notes that the Brumby Labor government is well positioned to face the more challenging economic and financial environment facing governments across the globe. Sustained strong financial performance under this government has provided the state with sound economic fundamentals in the face of difficult global financial conditions.

Rail: Lynbrook station

Mr SOMYUREK — On a further matter, I also congratulate the Brumby government for committing to the construction of the Lynbrook railway station in my electorate. Residents of Lynbrook have been waiting many years to hear the news that their railway station will finally be built.

STATEMENTS ON REPORTS AND PAPERS

Department of Transport: report 2007–08

Mrs COOTE (Southern Metropolitan) — I would like to speak today on the annual report of the Department of Transport for 2007–08. We have had a big week on transport in this place — and justifiably so. This government has let Victorians down. As we saw from a very lively debate yesterday on a motion moved by Mr Koch, we can understand the detail of the ramifications of the meltdown in our public transport system over this summer — one summer. It is appalling. I will not go into it at length because we had

a lengthy debate on it yesterday, and I encourage every member to read the report of the debate to see what the salient points were.

This report is an indictment on the department. From the outset it looks like a thick report of about 230 pages, but they are double-spaced. There are plenty of photographs and hardly any meat. The report does not discuss or talk about the incidents we have had over the past few weeks. It does not even talk about contingencies for these types of operations and what would happen to enable our infrastructure and power to cope with the heat. It is breathtaking to consider what is left out of the report, not what is included.

I want to speak mainly about the taxi industry, but I cannot pass up the opportunity to talk about what this report says about rail transport. At page 43 under the heading 'Systems and signalling' it states:

> The state government has committed to upgrading older train control and management systems to deliver a modern, reliable rail network.

How wrong is that! The report continues:

> High-quality systems are essential to operating a safe, reliable and efficient network and allowing for future expansion of the network.

It would not have taken too much for the department to have read its own report and to see how dismally it is failing. The report refers to older trains. One of the things that did not come out in yesterday's debate was older trains. I remind the chamber about the very, very old trains that the government had to go back and repurchase from a collector, who had them sitting in a paddock, so it could put enough trains onto the system. It is a totally inadequate Third World approach to what should be a First World system.

At page 50 — I want to get it into *Hansard* because next year's statistics will be absolutely fascinating — under the heading of 'Public transport performance — Metropolitan train services' the report says:

> A total of 99 per cent of scheduled metropolitan train services ran in 2007–08 …

The department is in for a surprise in the next lot of statistics, with 700 trains being cancelled in one day out of the 2000 that were supposed to be on the service. It will be fascinating to compare these figures, but this statement is locked in on a single page, tucked away at page 50. It is a shameful and disingenuous report. The director of the department should have come up with something far more comprehensive, given the seriousness of the state of our public transport system.

I also want to speak about what the report says about the taxi system. I remind the chamber about what Premier Kennett did with the taxi system. In many instances taxis are the first point of contact for people from overseas and interstate when they arrive in our city, and we have spent an inordinate amount of time and money on taxi safety, screens, monitoring and support for the taxi system.

I agree that drivers should have some support, but the passenger has been left out of the equation. We have forgotten what the passenger needs. What we have forgotten here is that a passenger expects to get into a taxi with a driver who knows where he is going. We want to know that he can speak and understand the language and we want to know that he can get from one place to another. There have been stories told of drivers not even knowing where Parliament House is.

Mr Finn — Or the MCG.

Mrs COOTE — Indeed, Mr Finn says, the MCG. Have a look at the taxi system in England, because it is world renowned. Drivers have to go through a comprehensive test. They must know the system and understand it. We talk about safety of drivers, but what about passenger safety? I get many inquiries in my electorate office about young women getting into taxis feeling concerned, afraid and threatened by these taxidrivers. Nowhere in the report does it talk about passenger safety. This is an indictment once again of a department that is out of its depth, out of its league and providing a Third World service in a country that deserves a First World service.

Rural and Regional Committee: rural and regional tourism

Mr DRUM (Northern Victoria) — I wish to take this opportunity today to talk on the government's response to the Rural and Regional Committee's report on the inquiry into rural and regional tourism, which was tabled yesterday. I am pleased, as the chair of the committee, to see that the government has made a very positive response to the report. As the Parliament heard, this report was put together about four months ago with the full support of the committee; there were no minority reports. We did not argue about one word or one sentence; the report went through with the full support of the entire committee. The government has taken our three key recommendations and supported and agreed to them in whole or at least in principle.

Over the course of the hearings we were hit with a whole range of problems that are affecting the tourism industry in rural and regional Victoria. We could have

either listed the hundreds of different issues or put in place a key recommendation that could provide the vehicle to fix many of these problems and give the people who are running the tourism industry in the regions the power to fix their own problems. That is something we incorporated into our key recommendation 1, and the government supports that.

The recommendation is to place high-quality executive officers in the regions to deal with all the respective problems and bring the funding models together to work within the different Jigsaw campaigns and local government areas to put out the various spot fires that happen within the tourism sector. We believe these high-quality executives in tourism — outside or inside Tourism Victoria; it does not matter — will be able to deal with the relevant tourism associations and get assistance through them. It is good to see that the government has supported that.

We are hopeful the government will not set up another level of bureaucracy with these executive officers. We do not want to have another level of bureaucracy sitting within the regions for all the tourism associations to have to go through in order to get a good program or local event up so as to encourage tourism into the area. It will be interesting to see how the government will implement this recommendation, but at least it is on side.

Everywhere we went with the inquiry we were beset with problems associated with road signage. Tourism operators are unhappy with VicRoads and its inability to put in a consistent signage regime across the state. At the moment the road signage in Victoria to get the traveller off the highway and to a bed and breakfast, a cellar door winery, a hotel, motel or resort or other places they need to go, is not working. The government agrees in principle that work has to be done with this, and again the proof of the pudding will be in the eating and how the government talks to VicRoads and instructs it on coming up with a model that will improve tourism signage throughout Victoria, but at least the government is supportive of that one as well.

Our third recommendation relates to planning. It is good to see that the government agrees in principle with the recommendation to help local councils to streamline and simplify their processes so they are able to come up with preferable and appropriate types of zoning for various tourism-affected areas. Some caravan parks are zoned as farms, and they simply cannot operate in that manner. Simply because there is a farm on either side of a caravan park does not change what it is. If a caravan park needs to put up a building, such as an outhouse or an attraction to make the business grow and help attract tourism to the area, surely the fact that it is zoned as farming land needs to be fixed up. The local councils were telling us that they simply do not have the ability, resources or wherewithal to make these changes to the zoning plans, so they need assistance from the government. We need the government to be more proactive with planning and community development and get out there and talk to local councils about the tourism sector to see where it can help.

A raft of other recommendations have been agreed to or agreed to in principle. It is a good day for tourism in Victoria, because it seems the government is prepared to acknowledge that things can be improved. Hopefully the government will go on and implement some of these improvements.

Victims of Crime Assistance Tribunal: report 2007–08

Mr ELASMAR (Northern Metropolitan) — I rise to speak on the Victims of Crime Assistance Tribunal's 2007–08 report. Firstly, the Brumby Labor government has continued to demonstrate its strong commitment to assisting victims of crime by continuing to provide a tribunal comprised of men and women who are deeply committed to providing speedy responses to the tribunal's applicants. These unfortunate people have suffered as a result of violent crimes being perpetrated against them, usually through no fault of their own.

The Victims of Crime Assistance Tribunal was established 11 years ago to provide financial assistance and, in some cases, payment for psychological therapy. On reading this report I was impressed by the large number of victims who have been assisted in a very real and practical way. The provision of payment to psychologists who are well placed and trained to give practical therapy to aid the recovery of victims of violence is critical to the victims' ability to restore normalcy to their lives and the lives of their family members.

In instances where a violent crime has occurred in the family home, I understand it is a very costly exercise for the house to be cleaned. Payments can be approved by the tribunal to help the family or residents who live at the crime scene to have the home cleaned professionally.

It is a sad fact that too often victims of crime are generally forgotten by the public. However, it is also true that many sadistic criminals are caught by our police and, in most instances, sentenced by our judges accordingly. But it is the victims themselves and their families who are left to pick up the pieces of their lives

and carry on. I read in the report that 2008 saw the highest number to date of assisted victims who have applied to the tribunal for financial aid or counselling. I am sure the main reason for this is that there is now a much greater awareness of the existence of the tribunal, and I believe that is a good thing. Referrals are often made by the victims of crime support service and community-based organisations.

Achieving justice or closure is not an easy matter for many victims of crime. The report identifies the importance of timely access to early intervention counselling to promote positive outcomes for victims. We, as a government, have the responsibility to protect our community against thugs and criminals and the responsibility wherever possible to try to help in a positive way to aid in the rehabilitation of innocent shattered lives. That is what this tribunal manages to achieve.

Victorian magistrates, both men and women, headed by a supervising magistrate appointed once every three years by our Chief Magistrate, Mr Ian Gray, sit on the tribunal at venues located all over Victoria. They are to be congratulated for their dedication and commitment to bringing empathy and compassion to their role and to determining to whom and how the funds for victims of violent crime are to be awarded.

The Brumby Labor government also recognises that adequate resources for this important program need to be ongoing. I commend the report, and I commend the Attorney-General, Rob Hulls, and all the tribunal members and their staff for their outstanding capacity to make the lives of these victims just a little bit easier during a most difficult and distressing time.

Department of Sustainability and Environment: report 2007–08

Mr P. DAVIS (Eastern Victoria) — I would like to make some remarks on the Department of Sustainability and Environment report for 2007–08. In particular I want to refer to the department's responsibilities in regard to fire management on public land.

I do so particularly because of the contemporaneous issues. Presently there are 87 fires burning in Victoria, and earlier this week we heard comment about the nature of the impact of deliberately lit fires in the Strzeleckis on communities there. But what I want to allude to is a significant and greater threat the Victorian community will be faced with on Saturday. It is evident that the fire forecasts show that Victoria has the prospect of facing a conflagration similar to that of Ash Wednesday or indeed perhaps Black Friday of 1939. I am advised that the forecast is for a temperature of 44 degrees with a dew point of minus 5, wind at 55 kilometres per hour gusting up to 85 kilometres per hour, and forest fire danger and grass fire danger indexes both at 100. The net result of all of this is that we are likely to see significant and uncontrollable fires across Victoria. We are particularly concerned that there could be fires of a similar ilk, for example, to those that affected Canberra in 2003. The consequences would be not just for persons and property; importantly we need to understand the impact it would have on the water catchments.

I refer to some work that has been undertaken under the direction of Professor Mark Adams, the dean of the faculty of agriculture at the University of Sydney. For some years he has conducted work in the alpine regions, looking at water yields across the eastern highlands of Victoria, in effect including from Canberra to the Upper Yarra catchment. What he has demonstrated by his work is the direct correlation between the amount of foliage — that is, vegetation and growth — and the water yield from the catchment. The two are directly related because transpiration has the greatest impact in terms of the utilisation of rainfall. What is left after transpiration can run off into our water catchments and reservoirs.

The problem I allude to is that the Melbourne water catchment has been substantially unburnt for some years, since 1939 — on my calculation that is 70 years. Because of a lack of fuel reduction burning by government agencies, what we have been left with is a high-intensity fuel load which would result in extreme burning. David Packham, a senior research fellow at Monash University who is looking at the specific issue of fire management, predicts that in those catchments we have the highest fuel loads for 40 000 years. The intensity of the fires would be devastating in the short run in their impacts on water yields and also in the longer term, because the regeneration across that 150 000-hectare catchment would be such that there would be a significantly reduced yield from the catchment.

From his research Professor Adams estimates that in the worst case scenario you would lose 30 per cent of the water yield for 80 years. If people think they are a bit short of water for a shower today, they should think about the consequences of that.

All of this can be sheeted home to the failure over a decade of the Bracks and Brumby governments to undertake proper public land management, in particular the management of fuel loads on public land in anticipation of the inevitable fires which do occur.

Under the watch of Steve Bracks and John Brumby we have managed to burn a third of our public land over the last five years, and I predict that there will be a significant additional amount of public land burnt this weekend. Indeed it is going to be catastrophic, and I note for the attention of the house that there will be impacts that the government will need to deal with next week.

Statements interrupted.

DISTINGUISHED VISITOR

The DEPUTY PRESIDENT — Order! I take this opportunity of drawing to the attention of the house that we have in the gallery Mr Steve McArthur, who is a former member for the seat of Monbulk in the Legislative Assembly. Before he and his guests take flight, we acknowledge his presence at Parliament today.

STATEMENTS ON REPORTS AND PAPERS

Statements resumed.

Rural and Regional Committee: government response to inquiry into rural and regional tourism

Ms DARVENIZA (Northern Victoria) — I am very pleased to rise to make a few brief comments on the government's response to the inquiry into rural and regional tourism. Mr Drum, who is the chair of the committee, spoke earlier. I am a member of that committee along with my parliamentary colleague Gayle Tierney, who is the deputy chair from the government side. Together with Mr Drum I welcome the government's response to the recommendations that were made by the Rural and Regional Committee after the inquiry into rural and regional tourism. Mr Drum expressed his pleasure at the government's response. The government has agreed to an overwhelming 90 per cent of the recommendations that were made by the committee, which clearly demonstrates that it is open to the recommendations.

This inquiry took us all over rural and regional Victoria, and we had the opportunity to meet with many tourism operators in different regions, a number of which have been going through some pretty tough times. They have experienced natural disasters including the ongoing drought, the floods in Gippsland and fires in parts of regional Victoria. People were very forthright, honest and giving of their time in sharing their experiences with us, and that was appreciated by all members of the committee.

Our government is committed to promoting tourism, and that is one of the reasons for the government's release of the regional tourism action plan, which provides for a $7.3 million advertising campaign over four years, highlighting spa and wellness experiences in Daylesford as well as the tourism strengths of communities right across Victoria. This is the next phase of the Jigsaw campaign, which we are all very much aware of from its various advertising campaigns. There will be $6 million over three years to enhance regional marketing, to get out there and market the regional tourism products we have, not only to the local market in Victoria but to our many national and international visitors to Victoria.

The plan includes $2.1 million over the next three years to promote Victoria's nature-based tourism strengths. A lot of work is being done right across the state promoting our many parks and nature-based tourist attractions. There are a number of those in my electorate of Northern Victoria, including the high country and the whole Murray region with the nature-based experiences that are available in that part of the region. There will be $900 000 to market regional Victoria's strength in food and wine, and what fantastic food and wine products and tourism attractions we have! In my electorate of Northern Victoria we have many fantastic experiences that people can take advantage of.

There will be $650 000 to address skills shortages facing the tourism industry by expanding the successful Tourism Excellence program. Mr Drum spoke about the shortages in his response to this report. The need to have a skilled workforce was a concern raised with the committee consistently right across the state.

We are seeing dramatic increases in visitations to regional Victoria and Victoria generally. International visitations to regional Victoria increased by 5.3 per cent, international visitor expenditure in regional Victoria increased by 14.2 per cent and domestic overnight visitor expenditure in regional Victoria increased by 6.1 per cent. Clearly tourism in regional Victoria is working.

Auditor-General: *Literacy and Numeracy Achievement*

Mrs PEULICH (South Eastern Metropolitan) — I wish to speak about the literacy and numeracy achievement report dated February 2009 and tabled yesterday by the Victorian Auditor-General's office.

Before commenting on the substance of the report I use this opportunity to commend the Auditor-General's office. With very few exceptions I go to most of the briefings that are organised, and I generally walk away with a degree of dissatisfaction, because the trend has been to use vignettes and samples from which valid and lasting conclusions are often very difficult to draw. This report, however, is different because it takes systemic information from the government school system in Victoria across a 10-year span. I commend the report. It is a very good launching pad for more intensive scrutiny of what we need to do to improve the quality of education in the state, in particular for the vast number of Victorian students, most of whom attend government schools.

What this report shows is that despite the constant rhetoric of the Brumby government that education is its no. 1 priority, John Brumby has presided over an alarming slump in literacy and numeracy standards in Victorian schools despite 10 years of being in power. What it also shows is that specific initiatives such as the capping of class sizes from prep to year 2 has had some effect, but it is a negligible and non-lasting effect. It also shows that the improvements across the life span of a student are lower in numeracy than in literacy but both present problems. We know the importance of both of these skills if people are going to achieve their full potential as adults, and I believe every dollar wasted is a dollar that denies these children the opportunities to acquire lifelong skills. We need to make sure that whatever funds are set aside by this government or any other organisation that pumps money into our education system are accounted for and used in the most effective way.

The object of the Auditor-General's report was to determine whether student literacy and numeracy are improving in government schools. This is the second time, the first being in 2003, that the government's inability to improve basic literacy and numeracy skills among students of all ages has been exposed. It is unfortunate that there is not comprehensive integrated data that could be used not only to assess the viability and the strength of our system but to track individual students who are deserving of greater help if they have challenges in either literacy or numeracy or other skills.

The four sets of data used include the assessment of reading, teacher judgement of student progress — and we know how subjective that can be despite the introduction of VELS (Victorian Essential Learning Standards) and its predecessor the curriculum support framework — achievement improvement monitoring and the Victorian certificate of education. These assessments span the school years from prep to year 12 and have different elements capturing various information relevant to literacy and numeracy.

The four assessments had a range of limitations when used to analyse long-term trends. Not all students were assessed in the same way, and the extent to which the full range of students' abilities was measured varied. Some data sets were not consistent over time, and the capacity to track the progress of individual students was restricted.

The recommendations from the Auditor-General are that, as a priority, this needs to improve. We need to have ways of capturing data that are consistent and comparable, which will give us an opportunity to intervene early to help individual students. Students generally performed less well in numeracy than literacy, and we need to make sure that we offer them the support they need in order to make the most of the resources and the opportunities this state and our community have to offer. Their parents expect that; they expect that. We, as legislators, should make sure that we make the systemic changes that will assist that process. At the moment it is all a little bit of a poke in the dark. We hope for the best, but there is no direct correlation or relationship between inputs and outputs. The outputs are crucial, because we are talking about individuals, we are talking about children, we are talking about future denizens of this state and hopefully leaders of our community.

Country Fire Authority: report 2007–08

Mr EIDEH (Western Metropolitan) — Recently our Premier fulfilled a lifelong and most commendable ambition by completing training as a Country Fire Authority volunteer. I sincerely believe this shows the great and sincere respect he has for the men and women of the CFA — the great volunteers who face danger on behalf of the people of Victoria. I further regard this as the mark of a leader, a man willing to test himself against others without seeking favours to ensure that he better understands these great Victorian heroes. I am certain that each and every member of this house would agree with me that the members of the CFA are heroes.

The 2007–08 annual report of the CFA records the achievements of that great organisation, and it is on that document that I rise to speak today. To quote from the report:

> CFA is wholly committed to the prevention, preparedness, response and recovery phases of emergency situations.

That they do it so very well is a testament to the men and women who are the Country Fire Authority. I also note from the report that the CFA serves over

2.6 million Victorians and protects over 1 million homes. It operates one of Australia's largest communications networks. The CFA's 60 000 people contribute over $840 million to the Victorian economy in addition to their great volunteering role in working to keep Victoria safe from fires and other disasters. They also service our developing economic growth corridors, which are essential to the future of the state. In the current economic times, each of these is something to boast about and something of which all in the CFA should be very proud.

There are many more positives I could mention about the great organisation that is the Country Fire Authority: how well it is managed; the manner in which it trains its people so very professionally — something the Premier can speak of firsthand; its absolute commitment to safety; and more. But when I talk about the CFA I must stress that its success is built on that great Victorian success story, the volunteer. Without volunteers so many areas of Victorian society would be in jeopardy and our very society would be that much weaker. While each and every volunteer is special — blood donors, hospital charity volunteers, opportunity shop people, sporting club people — the CFA volunteers, like the State Emergency Service volunteers, risk their lives for us.

The board of the CFA has acted professionally and responsibly in ensuring an efficient organisation and one of which we can all be very proud. This includes new initiatives such as using class A recycled water for fighting fires, given the severe water crisis in our state. The authority has also shown true vision in acting to become involved, offering its expertise, in the new developments that are enlarging the outer metropolitan area. The Country Fire Authority is a great organisation with a great sense of commitment to our state. I commend its volunteers, I commend its staff, I commend its board and I commend this report to the house.

Road Safety Committee: improving safety at level crossings

Mr O'DONOHUE (Eastern Victoria) — I am pleased to make a contribution this morning on the Road Safety Committee's report, dated December 2008, on its inquiry into improving safety at level crossings. This report flows from a motion moved by Mr Philip Davis on 18 July 2007. The issue of level crossings has been of great concern to the opposition for a significant period of time, but public awareness of the issue was heightened by the tragedy in Kerang in June of 2007.

Victoria has a terrible record with regard to level crossing safety and the number of uncontrolled or poorly controlled level crossings. In the metropolitan area the interface between the rail network and the road network is severely compromised by the number of level crossings and the lack of grade separations, and that applies in particular to the last three decades. The chairman in his foreword to the report said:

> … a comprehensive package of safety measures needs to be planned, funded and implemented in an energetic manner.

As Mr Guy so eloquently stated yesterday, the problem is that issues of safety and issues of fundamental infrastructure have not been high priorities for this government. Matters such as signalling and track replacement on our rail network, and the elimination of level crossings through grade separation or better safety, particularly in country areas, have not been a priority for this government, and this has led to an alarming number of accidents, near accidents and collisions.

In fact the chair concluded in his foreword that unless a number of surface level crossings are closed or new, lower cost technologies implemented, the committee considers it will be many decades before safety at level crossings can be improved. What concerns me, though, is that the government does not seem to take this challenge seriously, and the latest transport package, announced by the government last December, does not adequately fund or prioritise the elimination of level crossings throughout Victoria. The executive summary of the report states:

> During the six months prior to the commencement of this inquiry, from January to June 2007, there were 11 crashes between a train and a vehicle or pedestrian at level crossings, which resulted in 13 fatalities … In addition, rail operators reported 135 near misses with vehicles or pedestrians.

The system is in crisis and is literally an accident waiting to happen. That is of great concern to the opposition. That concern is heightened by the government's failure to get freight off the roads with its consideration of the introduction of B-triples. One can only speculate as to what impact that will have on road safety, particularly at level crossings.

In my electorate of Eastern Victoria there are a number of level crossings on what were traditionally country roads with a country rail network. They are now incorporated into the Melbourne growth area and are rapidly becoming part of metropolitan Melbourne. The frequency of train services on those lines has grown rapidly. At intersections such as Clyde Road with the Pakenham line, McGregor Road with the Pakenham line and Cardinia Road with the Pakenham line traffic

volumes have grown exponentially, and the failure of the government to act means that the cost of grade separation is also growing exponentially. As the land around these areas develops so too does the cost.

The report makes many good recommendations. I commend the committee for its work, and I hope the government listens to the recommendations and acts. The time for excuses is over; the time for action is now.

Murray-Darling Basin Commission: report 2007–08

Ms BROAD (Northern Victoria) — Today I wish to make a statement on the Murray-Darling Basin Commission annual report 2007–08. The report marks the 20th anniversary of the commission.

The Murray-Darling Basin Commission was a very important initiative of the federal and Victorian Labor governments 20 years ago — an initiative I well remember as an adviser at the time to the Victorian Minister for Conservation, Forests and Lands, Joan Kirner. She and Evan Walker, then Minister for Planning and Environment, were prime movers.

As it happens, the 20th year of the Murray-Darling Basin Commission is its last, because it is being subsumed into the new Murray-Darling Basin Authority. This follows action by current Labor governments in July last year to sign the intergovernmental agreement on Murray-Darling Basin reform. Members will recall the passage of the legislation through the Parliament at the end of 2008 after significant delays as a result of actions by the Liberal Party and The Nationals.

I wish to acknowledge and thank all the commissioners, chief executive officers and staff who have served over the 20 years of the Murray-Darling Basin Commission for their contributions, together with all the members of the community advisory committee who have participated over the same period. The community advisory committee was an important initiative of Labor ministers at the time the commission was established to ensure there would be community participation and advice to ministers, and that indeed has happened over the 20 years of the commission.

As the annual report points out, without the structure, operations and policies over the past 20 years of the commission, the Murray River would have run dry in the continuing drought conditions we are all experiencing. As the report points out, in recent years the biggest challenge for the commission has been to ensure the delivery of water down the river system — water for communities, for irrigators and for the environment and our rivers during a period of the lowest inflows in 117 years. The reported inflows into the basin in January were very close to historic lows at just 70 billion litres. As a result it is more important than ever before to use water resources as efficiently as possible. That includes massive investments in irrigation infrastructure to capture the huge water losses in the system which are continuing to occur. Those investments in infrastructure include commitments from the Victorian Brumby Labor government as well as the Rudd Labor government in a range of infrastructure projects, including the $2 billion food bowl modernisation project, which is a very good example of upgrading infrastructure to capture water savings and deliver more water to irrigators, to communities and to the environment as a consequence.

It is about time — in fact well past time — in light of not only the report that I am making this statement on today, the 2007–08 annual report of the Murray-Darling Basin Commission, and the first drought update by the new Murray-Darling Basin Authority, that the Liberal Party and The Nationals support these investments in infrastructure to reduce our system losses and capture these water losses for the benefit of the system. Unfortunately that is not being done, and we have seen, as a result of the actions of the federal Liberal opposition, a continuing opposition to investment in infrastructure which is much needed by the environment, by our irrigators and by communities.

I again congratulate all of the staff, ministers and members of the community who have contributed to the Murray-Darling Basin Commission over its 20 years. I understand many of them are seeking to or have already applied for transition to the new authority to continue their work in the new authority. Their work is needed more than ever before. We very much need the investments that Labor is committed to making to improve our water infrastructure and increase our water use efficiency. I take this opportunity to again call on The Nationals and Liberal Party to support these actions by Labor governments.

Auditor-General: *Preparedness to Respond to Terrorism Incidents — Essential Services and Critical Infrastructure*

Mrs KRONBERG (Eastern Metropolitan) — My statement today is on the Auditor-General's *Preparedness to Respond to Terrorism Incidents — Essential Services and Critical Infrastructure*. I recommend that all members of the chamber read this report, because it will send a little chill down their spine. The operative word has to be 'preparedness'. We

have certainly gone off the boil in terms of our focus on implementing what was our original strategic intent. Our ability to manage critical infrastructure has been very sorely tested — whether that is the supply of water, the supply of power or the supply of public transport services — and police manning levels come into the equation as well.

The report outlines the history of terrorism incidents. The concern in Australia originated with September 11, 2001, when Australia developed what was called a 'national counter-terrorism alert'. At the moment our counter-terrorism alert is described as being at a medium level, meaning that a terrorist attack could occur here. Since the Bali bombing in October 2002, reforms and enhancements to Victoria's response capability have resulted in the introduction of arrangements, legislation and a strategic intent for capabilities improvement.

It goes without saying that our capability here in Victoria relies on cooperation between state, national and territory jurisdictions. But for the purposes of this audit we looked to Victoria's counter-terrorism policy statement, *Enhancing Victoria's Domestic Security — New Measures for the Fight Against Terrorism*. This means what it means. Victoria Police are required to provide direct assistance to organisations that run our utilities — gas, water and electricity — along with transport and fuel supplies to ensure that their risk management plans are in place, are reviewed and are appropriately responsive and also that joint counter-terrorism exercises are coordinated.

The Auditor-General tells us that the government's response arose from a climate of concern that had developed because of the fact that the state's essential services and infrastructure of critical importance to Victorians — and of strategic importance to any terrorist looking at us — are now privately owned or operated. We are reminded that the primary responsibility for the adequate provision of protection of these critical assets and utilities rests with the owners and operators of our critical infrastructure. The Auditor-General points out that the agencies and arrangements that our emergency services use to respond to both routine incidents and emergencies are the same as those that the Victorian government uses to respond to terrorism. So there is no crack corps should a terrorism act occur in this state — it is business as usual.

What is revealed about cooperation, coordination and understanding of the imperative of combined training exercises beggars belief. The Auditor-General has concluded that the security and continuity networks, which originate in part from the coexistence of part 6 of the act for essential services and the critical infrastructure protection framework, are causing confusion to the agencies concerned and therefore actually hindering the coordination of a potential response by all parties as well as the capacity for them to analyse their own capabilities to respond. Government arrangements could be more effective.

The Auditor-General also stresses that security and continuity networks are not fully operational, with varying levels of progress among them: of the nine, only two are described as operating well. One has recently converted to another means of responding. Two are in the early stages of operation.

The DEPUTY PRESIDENT — Order! The member's time has expired.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Membership

Hon. J. M. MADDEN (Minister for Planning) — On behalf of Mr Lenders, I move:

> That Ms Huppert be a member of the Public Accounts and Estimates Committee.

Mr D. DAVIS (Southern Metropolitan) — I want to make a number of remarks on this appointment. I want to make it clear in the first instance that I have no concerns with Ms Huppert and indeed welcome her to this place. I believe it is important that Southern Metropolitan Region is represented in full. I want to put on the public record that I have in recent days been engaged in conversations with the Leader of the Government about the balance on a number of the joint parliamentary committees, and I believe there is a need for a significant rebalancing of these committees. The government controls all bar one of those committees, and I think that does not adequately reflect the democratic results that occurred in Victoria at the last election. It certainly does not reflect the load of those committees or the need for the references to be given a fair hearing with the widest representation across the Parliament.

There is in addition a concern regarding the establishment of committees in the Legislative Council; there is a question of resources. I have engaged in conversations with both minor parties and the Leader of the Government concerning the need for greater resources for the select committees of the upper house

and the need for the establishment of satisfactory and resourced standing committees.

Enormous resources are devoted by the people of Victoria through the joint parliamentary committees, and by and large they do a good job. I support the work of joint parliamentary committees and believe they can often provide useful ways of airing topics and reaching consensus across the chambers and across parties of the Parliament, which often leads to durable results for the community.

However, the very significant budget of the joint parliamentary committees is unbalanced given the considerable work done in this chamber and by the committees established by this chamber. Let me put it on record for the community so they understand: the budget of a joint parliamentary committee is of the order of $300 000 to $350 000 — I am quite happy to be corrected on that ballpark figure — while the Public Accounts and Estimates Committee has a budget of more than $1 million. We are talking about very significant sums. The committees need to fully and appropriately reflect the wishes of the community and deliver results for the community.

In speaking to this motion I indicate that the opposition will support the government's motion. We would have preferred these discussions to have been completed before the appointment was made, but in the interests of protecting the principle of replacement of like with like by the political parties, we will support the motion.

However, this is not the end of the discussion; indeed the discussion must be redoubled. It will happen at various committees of the other house, where we will seek the appropriate establishment of standing committees. However, standing committees are of little use unless they are appropriately resourced. That resourcing is a significant issue, and I believe there is a strong argument for rebalancing the resources between the joint parliamentary committees and the upper house committees. There needs to be a shift in those resources. I am not arguing for new resources for parliamentary committees but for a rebalancing of those resources to reflect what actually occurs, the work that is done, and the important scrutiny and review role of the upper house.

The work of upper house committees seeking to scrutinise the government and hold it to account is increasingly being frustrated by the lack of resources. I know those who have chaired those committees — Mr Rich-Phillips with the previous gaming committee and the current finance and public administration committee, and me with the public land management committee — have faced the challenge of insufficient capacity to undertake the reference to the extent that one would like. Indeed just yesterday in this chamber I discussed with a former member of the public land management committee the greater depth with which we could have examined a number of issues had we been able to access sufficient resources.

There are a number of issues involved. To recap very simply for the house: there is the need to rebalance the resources within the joint committees, and there is the need to rebalance the resources between the joint committees and the Legislative Council committees, both standing and select.

I am aware that the Leader of the Government is not here today because he is at a Council of Australian Governments meeting, but I look forward to those discussions with him continuing. In an act of good faith, we will support the appointment of Ms Huppert, but I place on record our concern that these matters be addressed quickly.

The DEPUTY PRESIDENT — Order! Before I call on Mr Barber, I point out that the motion before the house is a very tight and straightforward one — that is, it is a motion of appointment of a member to a committee. Mr David Davis has taken the opportunity to reflect upon the structure and resourcing of committees as part of his contribution to debate on the motion. I have been prepared to accept that discussion and line of argument as pertinent to the appointment motion because it relates specifically to the structure of committees.

However, I indicate to any further speakers in the debate that I propose to confine the matters discussed to those associated with the appointment itself, which is the substance of the motion, and to pertinent remarks in regard to the structure and resourcing of committees, which has been introduced as a subject matter by Mr Davis. I will not allow an expansion of this debate into a broader ranging discussion of the work of committees or of particular briefs before them at this time, because I believe that would be an extension well beyond the motion that is on the floor of the house.

Mr BARBER (Northern Metropolitan) — The Greens have no objection to the participation of Ms Huppert in parliamentary committees, which is both valuable and rewarding; however, the Public Accounts and Estimates Committee is possibly one of the most important elements of our democratic checks and balances, and we have on past occasions raised a number of objections in relation to the structure and make-up of PAEC. Specifically we believe this

committee should, regardless of the make-up of any particular Parliament, be controlled by a non-government majority. I have to say my participation in PAEC over the last two years has only strengthened that view.

When committees were first appointed at the beginning of the Parliament and when there were some changes to the relevant legislation, we moved an amendment that would set in stone that position within the act. If this particular appointment does not proceed, we will have a temporary situation due simply to the make-up of the current numbers that achieves our objective, which we argue from a number of points is the right one.

The alternative principle that has been put up is that there should be a like-for-like replacement of a committee member — that is, a replacement member from the same party as the member who has departed. There is nothing sacred about the current numbers and make-up of joint committees in this Parliament. They were put together as part of an unholy alliance between Labor and The Nationals, who were buddies at that time, as part of a broader deal.

Mr Viney interjected.

Mr BARBER — The Labor right always prefers to move into a partnership with a party of the far right. We see that on almost every occasion, and that particular deal was about allowances in people's pockets and who got to drive around in white cars and so forth, which makes it all the more tawdry. I wonder whether The Nationals' constituents who are now facing some of the challenges we are seeing in this state now wish there were stronger democratic checks and balances in place — but that is for them.

In addition, there is no urgency about an appointment. Despite the fact that I am sure Ms Huppert is very keen to get going, I am sure her head is still spinning a little too, and if another few weeks went by without that particular appointment, it may be that only one actual meeting of PAEC had to occur without her presence. This could be the trigger to bring to a head the sorts of discussions that Mr David Davis alluded to, and by my understanding there have been a number of meetings of the Standing Orders Committee which are meant to be thrashing out this issue.

Mr VINEY (Eastern Victoria) — Being lectured by the Greens and by Mr David Davis on the structure of committees is a little bit galling for members on this side. This is the alliance that put together two select committees in this chamber that had a total non-government domination of select committees, where there were only two government members of the 19 now in this place of the seven members on those select committees. This side of the house finds it a little galling to be lectured by the Greens and the Liberal Party about the structure of a parliamentary committee.

I understand that members on the other side would like to see a beautiful world where they controlled all of the committees in this Parliament, and I understand their reasoning. It is a bit tough when you are irrelevant in opposition, but you do not use the replacement of a government member by another government member as your point of manipulation to get to other things.

This is the most inappropriate and disgraceful attempt to try and manipulate an outcome, by suggesting that they — the Greens in particular — are going to oppose the appointment of a government member to replace another government member who has resigned from the committee. It is an absolutely inappropriate method of trying to manipulate the outcome that Mr Barber seeks. It is absolutely wrong.

The government has decided that it will proceed with this nomination. We appreciate that the Liberal Party has indicated it will support the nomination. It is an important principle that where a member resigns from a parliamentary committee, that member is replaced by a member nominated by the same party. If a member of the Liberal Party or The Nationals resigns from a parliamentary committee, on behalf of the government I can give an absolute iron-clad guarantee that we will support their nomination. That is what we would do even for the Greens. If a member of the Greens chooses to resign from a parliamentary committee, we would be more than happy to support one of the other two that remain in this house at that party's nomination.

This is not a time for the Greens to attempt to manipulate so as to gain the outcome they seek. The government has been in discussions with the Greens and the Liberal Party about some of the things they are seeking in relation to committees. Those negotiations can continue, they can happen and they can continue separately, but the Greens should not use this as the point of leverage to try and manipulate the outcome they want.

Ms PENNICUIK (Southern Metropolitan) — I support the points that Mr Barber has made in respect of the appointment of a government member to the Public Accounts and Estimates Committee. I will not repeat the points he made about his experience on that committee but to say that it is Greens policy, and it is the situation in other parliaments, that estimates

committees are not controlled by the government nor are they chaired by the government.

Mr Viney raised the point that somehow we are in some insidious way using this opportunity to raise the issue, but this is the opportunity to raise the issue. In 2007, when the Parliamentary Committees Act was amended to give the government control of all the lower house committees, I stood in this place to raise the issue of the chairmanship and constituency of the Public Accounts and Estimates Committee; I made that point very strongly.

It is an opportunity now that we have vacancies on these committees to raise this issue again because the Greens and the Liberal Party at the time queried why the committees were being constituted unfairly. At the time we said — and anybody can have a look at the make-up of the committees — the Labor Party and The Nationals had the majority on all of them. So this debate is a perfect opportunity to revisit that issue.

Mr Viney is very well aware that I have had discussions with the government on many occasions about the make-up and composition of committees. Mr Barber gave notice this morning of a select committee which does reflect a different composition, which is in line with the discussions we have had with the government, so that shows our good faith in that respect, and I have made the point many times to the government.

As Mr Barber has said, this not an issue about Ms Huppert; it is about the composition of the Public Accounts and Estimates Committee. The principle that Mr Viney has talked about — that is, replacing like with like on committees — is a fine principle as long as the composition of the committees in the first place is fair.

I have mentioned that we have put a proposal for a select committee which reflects fair composition as raised by the government in good faith, so the principle of replacing like with like is a fair principle if the make-up and foundation of the committees in the first place is done in a cooperative way. So we will not be supporting — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! I will not have Mr Viney discussing matters across government benches.

Ms PENNICUIK — My points were mainly that replacing like with like is a fine principle if the composition of the committees in the first place was done in a legitimate and fair way, which it has not been. It is an opportunity to raise that issue in the Parliament now.

Mr KAVANAGH (Western Victoria) — As has been pointed out by David Davis, PAEC (Public Accounts and Estimates Committee) is an extremely expensive committee. A lot of money is spent by Victorian taxpayers on its work. As an outside observer it seems to me its job is not being done effectively because the government has a majority on the committee, which is basically intended to review government actions. We all know that people tend, by definition, not to be objective about themselves. Indeed, it is a rule of natural justice that you cannot be a judge in your own case.

Mr Viney talked about the timing of raising objections to the composition of committees, saying that the retirement of one member from the Parliament and therefore a committee that he or she serves on is not the right time. However, as Ms Pennicuik said, retaining the status quo is fair if the status quo is fair. If the status quo is not fair then retaining it is hardly an act of fairness.

Mr Leane — What about select committees?

Mr KAVANAGH — 'What about select committees?', Mr Leane asks.

Mr Viney interjected.

Mr KAVANAGH — If Mr Viney looks at the voting record, he will see that I voted each and every time to balance select committees a little more fairly than they were balanced. However, it would seem to me, for example, with the select committees, that if someone retired or resigned from them, that would be the appropriate time to consider the composition of those committees as well. I do not see anything wrong with that.

There is the principle of replacing like with like, which sounds attractive, but there are more important principles involved. Firstly, there is the principle of obtaining value for money for the taxpayers of Victoria who are paying for this committee and who would like to see something of real benefit come to the state from it. I do not believe much benefit is going to come to the people of Victoria unless the composition of the committee changes.

There is another principle, which is that governments should be accountable. Retaining the present composition of the committee would mean that the government would not be accountable through PAEC to the people of Victoria. With no reflection on the

considerable abilities of Ms Huppert, I intend to support the position of the Greens.

Ms BROAD (Northern Victoria) — I wish to take this opportunity to support the government's nomination of Ms Huppert to PAEC (Public Accounts and Estimates Committee) and also to make some remarks about the principles that have been referred to of democracy and fairness — principles which Labor absolutely stands by. It is interesting to contemplate what some of the speakers we have heard on the other side might mean when they refer to fairness and democracy. In most people's language fairness and democracy might mean that the numbers in the Parliament, which reflect the outcome of a democratic election for the Parliament, should be reflected in the Parliament's committees.

There is a very good reason that on all committees established by Parliament, with some notable exceptions — one very generous exception by the government and two select committees of this house, which I will come to in a moment — the government has a majority. It is for the very simple reason that those numbers reflect the results of the 2006 election by the people of Victoria, and therefore one would think it reasonable that those election results would be reflected by this Parliament.

As has been indicated by Mr Viney, it is galling indeed to be lectured, particularly by the Greens and by Mr Kavanagh, about these principles when votes to establish select committees of this house have absolutely flouted principles of fairness and democracy by establishing committees of seven where Labor, the government, has only two out of the seven members when it has in this chamber, for everyone to see, 19 members out of 40. In anyone's reasonable interpretation of fairness and democracy, two out of seven does not reflect the results of the 2006 election and the wishes of the people of Victoria. For those reasons I reject the interesting interpretations of the principles of fairness and democracy that the Greens and Mr Kavanagh are choosing to put before the house.

I support the government's nomination of Ms Huppert, and I support the principles of fairness and democracy which Labor, the government, has continued to support in this Parliament in relation to the establishment of parliamentary committees.

Mr HALL (Eastern Victoria) — I did not intend to speak on this motion, but having listened to the contributions of government members they seem to be harking back to the principle of proportional representation and being critical of the numbers that select committees of this party have been formed on. In response to the government's arguments presented by Mr Viney and Ms Broad I point out that proportional representation is a system that now elects all of us in this Parliament. Proportional representation is all about parties; it is not about individuals or individual numbers.

In terms of proportional representation one can argue that select committees of this house can be based either on parties or on individuals who have been elected to this Parliament. Consistent with the principle of proportional representation, the select committees of this house have been based on the number of parties elected by proportional representation rather than by the numbers of people elected under that system.

That is totally consistent. If the people of Victoria decide to elect members of the Labor Party, the Liberal Party, The Nationals, the Greens or the Democratic Labor Party to this Parliament, each of those parties deserves to be represented on select committees of this house.

Ms Broad — That is not proportional representation.

Mr HALL — That is proportional representation (PR), because PR is all about parties; it is not about individuals. The criticism of the government is totally inappropriate and not logical given that it espouses the principle of proportional representation.

The essence of this motion is to appoint a new member to the Public Accounts and Estimates Committee. I totally support that member being elected, but let us not hear the government throw up this furphy and make this a debate about the composition of select committees of this house. We have a mandate in this chamber to appoint select committees. We have done that according to the principles of PR, which the Labor government introduced.

Ms Broad — That is a nonsense.

Mr HALL — It is not a nonsense.

House divided on motion:

Ayes, 34

Atkinson, Mr	Lovell, Ms
Broad, Ms (*Teller*)	Madden, Mr
Coote, Mrs	Mikakos, Ms
Dalla-Riva, Mr	O'Donohue, Mr
Darveniza, Ms	Pakula, Mr
Davis, Mr D.	Petrovich, Mrs
Davis, Mr P.	Peulich, Mrs (*Teller*)
Drum, Mr	Pulford, Ms

Eideh, Mr	Rich-Phillips, Mr
Elasmar, Mr	Scheffer, Mr
Finn, Mr	Smith, Mr
Guy, Mr	Somyurek, Mr
Hall, Mr	Tee, Mr
Huppert, Ms	Theophanous, Mr
Koch, Mr	Tierney, Ms
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr

Noes, 4

Barber, Mr	Kavanagh, Mr (*Teller*)
Hartland, Ms	Pennicuik, Ms (*Teller*)

Motion agreed to.

ANNUAL STATEMENT OF GOVERNMENT INTENTIONS

Hon. M. P. PAKULA (Minister for Industry and Trade) — On behalf of the Treasurer, I move:

> That the Council take note of the annual statement of government intentions for 2009.

Ms HUPPERT (Southern Metropolitan) — Thank you for the opportunity to speak today. I wish to acknowledge the traditional owners of the land on which we stand, the Kulin nation. It is a great privilege to represent the electorate of Southern Metropolitan Region and to be a member of the Brumby Labor government.

Southern Metropolitan Region is a diverse electorate, and its residents include representatives from many different walks of life and backgrounds. The electorate includes the vibrant Southbank arts precinct and cosmopolitan Acland Street, and is home to sporting facilities such as the Melbourne Sports and Aquatic Centre and the world-renowned golf courses.

The percentage of residents in the electorate born outside Australia is greater than the Victorian average and many have been long-time residents not only of Australia but of the Southern Metropolitan Region. Those residents in the electorate who have migrated to Australia have done so for a variety of reasons — some fleeing persecution and others looking for a better life for their families. To some extent my background reflects this diversity.

I have lived in the electorate of Southern Metropolitan Region all my life, as has my mother, Janice, and her mother, Esther Rosengarten. In fact my great-great-grandparents moved into the electorate some 90 years ago, having migrated to Melbourne from England in 1898. My maternal grandfather, Bernie Rosengarten, arrived from England in the 1920s and lived in the electorate for the rest of his life. My late father, George Huppert, who was born in Vienna, arrived in Australia with his parents in 1941. My paternal grandparents, Eugene and Mina Huppert, were born in what are now the Czech Republic and Poland respectively. My father moved into the electorate a few years after arriving in Australia and stayed. My husband, Bobby Guttmann, migrated to Australia 25 years ago, and he, too, has lived in the electorate since his arrival.

My family has a long history of service to the community. My parents have committed many hours to community and service organisations, including scout and guide groups, the Melbourne Hebrew Ladies Benevolent Society, Rotary and B'nai B'rith. Most recently my father worked tirelessly for Courage to Care, a travelling exhibition and educational program dedicated to promoting respect and acceptance of all people. My parents' commitment to the ideals of community service, social justice and human rights has been a profound influence on my life. I know that my father, who passed away only a few months ago, would have been very proud to see me standing here in this place.

My interest in issues of public policy stems from a number of different sources. Some of the policy issues of particular interest to me are issues around social justice and social inclusion and ensuring that development of our great state of Victoria occurs in a manner which delivers benefit to all.

As a geography student at Monash University in the early 1980s I studied the effect of unchecked and unplanned development on Melbourne, particularly on those living in the new suburbs springing up on the edge of the city without access to infrastructure such as public transport and community services. I also looked at the different but just as difficult challenges facing the more established suburbs, such as those in Southern Metropolitan Region, of coping with ageing infrastructure. My concern with these issues led me to join the ALP.

The Premier, in his statement of government intentions, restated the government's commitment to planning for Victoria in a sustainable manner. Melbourne 2030 and Melbourne @ 5 million provide a framework for managing the growth of Melbourne through cooperation with local councils so that new suburbs are properly serviced by infrastructure such as schools, health services and transport. The development of six central activity centres located around transport hubs and in areas of high population density will enable existing infrastructure in more established suburbs to be

properly utilised. The blueprint for regional growth will facilitate opportunities for the creation of regional development strategies.

Community building requires more than infrastructure, as recognised by the government's focus on support for community organisations and volunteers, which provides opportunities for people to participate in their communities.

There are many people who have provided support, encouragement and friendship during my years in the ALP. In the mid-1990s I had the opportunity to work for Clyde Holding, then federal member for Melbourne Ports, who made a significant contribution to both the Victorian and commonwealth parliaments. I also wish to mention the support of the Treasurer, John Lenders; the Speaker of the Assembly, Jenny Lindell; Marsha Thomson; Michael Danby, the federal member for Melbourne Ports; and Michael Borowick, assistant secretary of the AWU (Australian Workers Union).

I have been a member of the National Council of Jewish Women of Australia since the early 1980s. Through my involvement with NCJWA I have had the opportunity to meet many remarkable volunteers, who devote hours of their time to programs such as senior citizens clubs, support for migrants, training for women seeking to return to the workplace and developing interfaith relations.

I would not be standing here today without the support of my family and friends. In particular I would like to thank my husband, Bobby; my sons, Benjamin, Daniel and Nathan; and my mother, Janice. My family has always supported me in both my career as a lawyer and my involvement in the community and the ALP, and has encouraged me to accept the opportunity to serve as a representative of Southern Metropolitan Region.

Debate adjourned on motion of Ms MIKAKOS (Northern Metropolitan).

Debate adjourned until later this day.

SERIOUS SEX OFFENDERS MONITORING AMENDMENT BILL

Second reading

Debate resumed from 4 February; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr DALLA-RIVA (Eastern Metropolitan) — I am very pleased to have been present during Ms Huppert's inaugural speech and to share with the chamber in wishing her well, although I was disappointed that not all members were here to share in hearing her speech.

But having said that, the house is now debating the Serious Sex Offenders Monitoring Amendment Bill, which has been introduced because of the concerns raised in light of the Court of Appeal's decision late last year in *RJE v. Secretary to the Department of Justice*. That case involved the capacity of courts to issue extended supervision orders (ESOs) .

I remember the concept of ESOs being introduced into this chamber a number of years ago, and at the time we on this side of the chamber thought they were a good mechanism for monitoring offenders who had served their sentence for very serious offences. At that stage it was for sex offences against children or minors; later it included rape, which is what I think we called for at the time the principal legislation was brought in. However, that was voted down by the government, which thought that was not appropriate.

An amendment was then brought in last year to include rape, which meant that whether the victim of the offence was a minor or an adult, the offender would come within the criteria of an ESO.

The Court of Appeal has now found what could only be described as a loophole in the current legislation, which has raised the hurdle for the Crown of justifying the granting of an ESO by changing the onus of proof from 'likelihood' to 'high level of probability'. The decision of the Court of Appeal made the onus of proof much more difficult for the Crown to obtain an ESO, and it also opened up the possibility of appeal by many offenders who presently have ESOs.

I make it very clear that despite those who may criticise ESOs as being a breach of individuals' rights, we on this side of the chamber will always support ESOs. We think they should indeed be extended to apply to other serious offences. I will not go into that debate today, but I understand the urgency of this legislation. The bill was brought into the other place earlier this week, and it has been brought into this house as a priority at the first available time. We will give it our fullest support to ensure that there are no loopholes possible in the granting of ESOs in the appropriate circumstances.

I must, however, say that there are those in some circles — particularly the civil rights circle — who believe ESOs are not appropriate. I think they are appropriate, and the state opposition will support them now and into the future.

It is not a detailed bill, to say the least; I think it goes for only a couple of pages. It clarifies the situation, as I

said, for the courts. Clause 4 deals with when a court may make an extended supervision order, and it inserts new subsections (2A) and (2B) in the principal act after section 11(2); they are there in the bill for those who wish to read them. There are also provisions on a determination of review, and on page 3 the insertion of new section 52.

As I said, the provisions are straightforward. However, I would like to get clear what happens after the current decision. Would another ESO be granted against the appeal? I do not know; I am not too sure, because I was not able to attend any briefings. It would be good if one of the government members could clarify that. I know it is in the legislation, but that might help for the record.

As I said, the bill provides that a court may make an ESO if there is a risk of the offender committing a relevant offence and that risk is both real and ongoing and cannot sensibly be ignored having regard to the nature and gravity of the possible offending. It removes any scope for uncertainty by allowing that the determination of an ESO may be based on a moderate risk, given the trauma and damage to the victims and to the community. That is provided for in new section 23(2B), which clarifies the intention of the bill by stipulating:

> an offender is likely to commit a relevant offence on the basis of a lower threshold than a threshold of more likely than not …

Looking through that wording brings back the old memories of probability. This makes it very clear. Rather than referring to 50 per cent, it talks about risk and how that risk should be assessed. Rather than saying that if the risk was 2 in 10, which would be considered too great, the bill says that the risk should be considered to be at a higher level, given the nature and gravity of the possible offending. That would include those who may have committed one or two offences against children. Clearly they have a propensity to offend on their release. While the apparent risk might appear low, given that only one or two children were involved — as serious as that is — because of the nature and gravity of the offence, this bill now clearly defines that that would probably be a 6 out of 10 risk, and therefore the court would be more attuned to that person receiving an ESO.

As I said, it is a simple, straightforward amendment. It clarifies an important loophole that has been found by the lawyers. I guess that is what they are paid to do. I am sure the Parliament will agree that any such loophole involving serious crimes of the nature outlined in the principal act should be closed straightaway. The opposition will certainly support the bill before the chamber.

Ms PENNICUIK (Southern Metropolitan) — In the last sitting week the government introduced the Transport Legislation Amendment (Driver and Industry Standards) Bill with a view to passing it in three days. There was a genuine misunderstanding regarding the granting of leave. That was thrashed out in the debate then, and I do not want to revisit it except to say that leave was granted in the absence of the Greens. Our point was that rushing bills through without time to consider and without a report from the Scrutiny of Acts and Regulations Committee on the human rights implications is not good process. I think we made that point strongly. That bill, on any reflection, was not urgent and should not have been rushed through.

We are in a similar position with this bill. It was introduced into this house yesterday and is being debated today, with a view to passing it today. However, in this case the Greens will support the passing of the bill because we are satisfied that it is urgent.

The government gave us a comprehensive briefing on the outcomes of a Court of Appeal case which occurred after the rising of the Parliament on 18 December last year. The Court of Appeal interpreted the word 'likely', which appears in section 11(1) of the Sex Offenders Act, in a way the government and Parliament did not intend it to be interpreted. In particular, as Mr Dalla-Riva has pointed out, it has assigned a numerical figure and said that 'more than 50 per cent likely' means that someone would be 'more likely than not' to commit a sexual offence that they had previously been incarcerated for. It has assigned to that 'more likely than not' phrase a figure of 'more than 50 per cent'. In the briefing given to us by the department — and I thank the officers for that briefing — it was very clear that that was not the intention of the original act, and it is not necessarily the usual interpretation of those words in the statute.

The bill before us, which is reasonably short, seeks to clarify the original intention of the word 'likely', of which the court needs to satisfy itself in the granting of an extended supervision order. Such an order can only be granted in the Supreme or County courts. As Mr Dalla-Riva said, there are varying opinions in the community about the desirability and effectiveness of extended supervision orders. It is definitely a difficult balance. In this case the Court of Appeal was concerned with the common-law rights of liberty of the individual. We know that in the case of sex offences, particularly

serious sexual offences against children, that right of liberty needs to be balanced against community safety.

The bill goes a little further than just simply clarifying the original act; it also introduces the notion that the risk is both real and ongoing and cannot sensibly be ignored having regard to the nature and gravity of the possible offending. The court would be looking at not only the likelihood of reoffending — that is, the risk — but also the gravity and nature of the offence. The court would not only be looking at whether the person is 'more likely than not' or 'highly probably likely' or 'very likely' to reoffend. Even if they were 'less than very likely', if the offence was of such gravity that the harm caused to the community and to the victim or victims would be substantial, the court must take that into account. It makes that very clear.

With these types of issues it is always a very difficult balance — rights and protections against safety. Having talked that over with my colleagues, listened to the briefing and read the material that was supplied to me by the department, I am quite confident that the bill, as presented, clarifies the position and makes clear what a court needs to take into account when deciding whether to grant an application for an extended supervision order made by the department to the court.

I understand from the briefing that there are currently around 44 extended supervision orders in Victoria. Some are interim, some are in train and 24 of them are active, which means that the persons on the ESOs are out in the community under supervision according to the conditions that have been assigned to their extended supervision orders by the Adult Parole Board and the court. With those few words, the Greens will support the bill.

Mr TEE (Eastern Metropolitan) — We are all agreed that there are few crimes as heinous as those committed by serial sex offenders. Their predatory behaviour can devastate the lives of their victims. We also know there is a core group of particularly obnoxious offenders who, although they have served their sentences, have not been rehabilitated and are at risk of reoffending when they are released. These offenders often have little control of or insight into their offending behaviour and little empathy for their victims. For these offenders the risk of reoffending is such that once they have served their sentences they need to be monitored on an ongoing basis. Since 2005 there has been a monitoring regime, put in place through the Serious Sex Offenders Monitoring Act 2005, that provides protection for the community against known sexual predators.

An important protection is that the act allows a court to impose an extended supervision order once a custodial sentence has expired. On 18 December last year the Court of Appeal found that it would only grant an extended supervision order if it was more likely than not that an offender would reoffend. The court found that there had to be a greater than 50 per cent chance of reoffending. When you consider the serious nature of the offences being contemplated, the impact the offences have on victims and the track record for reoffending of the types of offenders we are talking about, this test by the Court of Appeal sets a benchmark that is too high and that is beyond what the community would expect in terms of safeguards against such offenders. Reports by clinical experts have advised that this is a very high test indeed and that it is unlikely to be met.

There is a risk today that those serving extended supervision orders could have their orders revoked either on review or on appeal. There is a risk that some offenders currently serving sentences in prison will not qualify for an extended supervision order under this test, while the community would expect that one should be in place. The community expects and deserves greater protection from having such offenders on our streets unsupervised, and the government wants to ensure that the community is protected from those who pose a risk to some of our most vulnerable, particularly children and young people.

The government has moved quickly. As I said, the decision of the Court of Appeal was made just before Christmas, and this is the first sitting week since then. The bill was introduced into the Legislative Assembly on Tuesday of this week, and it was passed on Wednesday. That same day the bill was introduced into this chamber, and it is now being debated the very next day.

The bill before us clarifies the test for an extended supervision order and provides a test which says there is a real and ongoing risk of reoffending — a risk that cannot sensibly be ignored when you consider the nature and gravity of the possible reoffending. This test gets the balance right; it minimises the risks of having serious sexual predators on our streets, and it is an important step.

It is important to acknowledge the other parties for their cooperation in allowing the Parliament to deal with the bill in such an expeditious manner. With those words I urge the house to support the bill.

Mr VINEY (Eastern Victoria) — I am happy to indicate my support for legislation that is designed

primarily as a protection for the community. This was important legislation when it was introduced to the Parliament in 2005, and as with all legislation some interpretations of the Parliament's intent have been made and it is now necessary for the Parliament to clarify what its intentions are in relation to that. The government's intention in this has always been the protection of the community. It is an undeniable, if difficult, fact to acknowledge that some serious sex offenders will continue to commit such offences even after having served a custodial sentence and even after treatment.

This legislation is important because often for the victims these offences have a lifelong impact. In dealing with people who have committed such offences, unlike in the case of other crimes such as those against property, it is essential that governments do all they can to ensure that offenders not only serve their time but that there is ongoing protection for the community against the risk of these offenders reoffending.

Other speakers have outlined what has taken place, but a Court of Appeal decision has interpreted the Parliament's legislation in a particular way that makes it more difficult for the ongoing monitoring of serious sex offenders. Therefore it has been necessary in this legislation to clarify some of the intent. In particular, in order to eliminate the risk of serious sex offenders continuing to commit offences without there being some ongoing monitoring, the bill provides that an offender is likely to commit a relevant offence if there is a risk of the offender committing a relevant offence and that that risk is both real and ongoing and cannot sensibly be ignored, having regard to the nature and gravity of the offending. To remove doubt in relation to this matter, the bill clarifies that sections 11 and 23 permit a determination that an offender is likely to commit a relevant offence on the basis of a lower threshold than a threshold of more likely than not, which is what was used in the Court of Appeal process.

The purpose of the act as it is explained is to enhance the protection of the community by requiring sex offenders who are a serious danger to the community to be subject to that ongoing supervision. The whole intention of the legislation is lost if the threshold test for a court determining whether ongoing monitoring is required goes too high. Of course care has to be taken in these matters and they need to be subject to a reasonable and appropriate amount of assessment, but if the threshold for determination of the risk of someone reoffending is set too high, in my judgement the risk to the community becomes too high. As I said at the outset, it is an unfortunate reality that some of the people who commit these offences in the first place have a recidivist pattern. It is unfortunate that some of those people who recommit these offences are people who commit some of the worst offences that one can imagine.

The legislation is not just about the basis of monitoring and the question of justice around the issues of people who commit offences, but the important need to protect the community from people who commit these offences, because it is absolutely true that these crimes can have lifelong impacts on the victims. With those few words I commend the bill to the house.

Ms MIKAKOS (Northern Metropolitan) — I am pleased to rise to speak in support of the Serious Sex Offenders Monitoring Amendment Bill. I may be doing so at some length; I am not quite sure at this point. I will find out in the fullness of time, I am sure. Before we go on to question time I just want to make some preliminary comments and indicate that we in the government are very appreciative of the fact that other parties have assisted us in expediting the debate on and passage of this legislation. Members appreciate the timely nature of it.

On a number of occasions we have had cause to debate legislation in this Parliament relating to sex offender crime, and certainly I and others have noted that this is one of the most abhorrent types of crime that exists. We have commented on the insidious and risky behaviour engaged in by paedophiles in particular and the fact that they systematically prey on children and young people and that they have a recidivism rate much higher than those of other types of offenders.

In response to those kinds of risks to the community and to the statistics about recidivist behaviour and so forth the government has sought over the last few years to put in place a range of measures to protect our community and in particular our young people. One of those measures has been the serious sex offender monitoring regime that has been put in place to ensure that there is ongoing post-sentence supervision of those who commit serious sex offences against both adult and child victims. What this bill before us is seeking to do is put in place further protection for the community — to provide clarification and strengthening of that regime to ensure the ongoing protection of our community.

As previous government speakers have already indicated to the house, the main purpose of the Serious Sex Offenders Monitoring Act is to enhance the protection of the community by requiring that sex offenders who pose a serious danger to the community be subject to ongoing supervision when they are

released back into the community. In order to do this the scheme empowers the court to impose an extended supervision order on an eligible offender for a period of up to 15 years. There is also scope under the scheme for interim extended supervision orders to be made. There is a very strictly set out criterion test that the court has to be satisfied of before it makes these orders. That obviously reflects the fact that this is an onerous set of obligations that are imposed on individuals in the community who have done their time and been released back into the community — —

Business interrupted pursuant to sessional orders.

ABSENCE OF MINISTER

Mr JENNINGS (Minister for Environment and Climate Change) — President, I inform the house as a matter of courtesy that the Treasurer, the Leader of the Government, is currently attending a Council of Australian Governments meeting in Canberra with the Premier and will be unavailable for question time today. If members want to raise questions with him, I will do my best to answer them or take them on notice.

QUESTIONS WITHOUT NOTICE

Former Parliamentary Secretary for Innovation: conduct

Mr D. DAVIS (Southern Metropolitan) — My question is for the Minister for Innovation. I refer to the high-paying job taken up by former parliamentary secretary, Evan Thornley, with the company Better Place and to his negotiations with that firm while holding office as Parliamentary Secretary to the Premier and the minister's Parliamentary Secretary for Innovation. Will the minister confirm that Mr Thornley was present when cabinet discussed the state government's policy on green cars?

Mr JENNINGS (Minister for Innovation) — That is an interesting question, because I think a number of assertions were given as fact — a number of propositions in terms of cabinet process which I should be reluctant to comment on because cabinet processes are not normally subjected to disclosure within any Parliament, in this jurisdiction, around the nation or around the world.

To dispel what could be the intrigue around this matter, I indicate to the chamber, as a matter of generosity of spirit if nothing else, that there has never been a cabinet process which I have participated in which has discussed issues of approaches to sustainable development within the car industry, which includes in this context the green industry. Never any conversation that I have participated in at cabinet level involved Mr Thornley.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — The fact is that government secrets and inside information appear to have been used by Mr Thornley for personal advantage. Will the minister give an undertaking to the house that he has never discussed Better Place or the government's arrangements with Better Place with Mr Thornley?

Mr JENNINGS (Minister for Innovation) — I can fulsomely and wholeheartedly declare to this chamber that I have not had a conversation with Mr Thornley about Better Place.

Manufacturing: future

Ms HUPPERT (Southern Metropolitan) — My question is to the Minister for Industry and Trade, Martin Pakula. Will the minister outline how the Brumby Labor government is working with the commonwealth government to help protect manufacturing jobs, and is he aware of any threats to these plans?

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank Ms Huppert for her excellent first question as a member of this Parliament. The manufacturing industry is central to the creation of a sound economy and central to the creation of jobs for Victorians, and this government has been taking action to help industries — —

Mr Guy interjected.

Hon. M. P. PAKULA — I am glad you like it, Mr Guy, it reminds me of one of yours! The Brumby Labor government is taking action to help the industry, which is critical to Victoria's future prosperity, to survive and thrive. This industry employs more than 315 000 Victorians and contributes more than $30 billion to the Victorian economy. As was outlined by the Treasurer yesterday, the economy, and by extension the manufacturing industry, is facing some unprecedented challenges at the moment.

There is the challenge of the global financial crisis and related uncertainty that that is creating; there are the significantly lower growth rates in the tiger economies of India and China that we have been relying on; global share markets have basically halved over the last 12 months; and investor confidence is down in the US.

Last week we saw 70 000 jobs disappear in one night, and there has been a reduction in consumer spending.

By supporting and strengthening Victorian industries that make the products, that deliver the services, that create the jobs and exports for our future growth and prosperity, the government is ensuring the security and sustainability of jobs in the manufacturing industry. Late last year we delivered the $245 million manufacturing statement *Building Our Industries for the Future*.

Mrs Peulich interjected.

Hon. M. P. PAKULA — That strategy, Mrs Peulich, helps deliver the strategic leadership, policies, programs and investment to help Victorian industry and manufacturing grow stronger.

Mrs Peulich interjected.

Hon. M. P. PAKULA — Mrs Peulich asked a question. This comes from a party that still does not have any policy whatsoever in this place. I have looked for it, and I would have had more luck looking for the Loch Ness monster in my bathtub than looking for a Liberal policy on industry.

The strategy includes the $122.7 million manufacturing action plan, which includes the $50 million industry transition fund, the $97.2 million services action plan that positions the services sector to develop new global opportunities and the global markets action plan of almost $25 million to help Victorian firms develop export markets and integrate into global supply chains. There is also the strengthened Victorian industry participation policy, with better opportunities for local jobs and better opportunities for local small and medium employers. By supporting the firms that have the potential to be the engines for growth, the $50 million industry transition fund will turn the challenges of increasingly competitive global markets and climate change into new opportunities for Victoria.

The manufacturing statement simply built on the previous work of the Brumby Labor government over 2008, with $316 million invested in the skills program to train 170 000 more young people and provide new training places, to upgrade TAFE facilities and deliver more flexibility for individuals and employers; the $300 million innovation fund brought down by the innovation minister, Victoria's future statement; the nearly $1.5 billion in tax cuts in the last state budget; the $3.2 billion capital works program; and the decision to cut the regulatory burden by a quarter by 2011.

That is not all the Victorian Brumby Labor government is doing. We are also working with our colleagues in the federal government. On Tuesday the Rudd Labor government released its $42 billion nation-building and job plan to support 90 000 Australian jobs. Part of that plan is a $2.7 billion business tax break for all Australian businesses — a tax break to help Australian businesses boost business investment, bolster economic activity and support Australian jobs. We support not just the $2.7 billion business tax break but the whole $42 billion plan.

Honourable members interjecting.

Hon. M. P. PAKULA — In order to support investment, in order to support the economy, Victorian consumers are ready to spend, industry is ready to spend and construction companies are ready to help provide the resources and skills to upgrade Victorian schools and upgrade public housing. Farmers and producers are ready at the farm gate. Car manufacturers are ready. Component makers are ready. The Premier of Western Australia, Colin Barnett, is ready. And as Premier Brumby has indicated, Victoria is ready to go. We have projects online, ready to go, when this money becomes available, but the biggest threat to all of that — the biggest threat to economic growth, the biggest threat to protecting Victorian jobs and Australian jobs — is those opposite.

Mr P. Davis — On a point of order, President, I discreetly suggest that you remind the new minister that attacking the opposition is not in the ambit of a minister responding to a question.

The PRESIDENT — Order! Mr Philip Davis is correct in saying that it is not appropriate for ministers answering questions to overtly attack the opposition or the individual who asked the question. I remind the minister of the standards we have in the house.

Hon. M. P. PAKULA — I thank the President for his ruling. I will simply make this point — and I will try to do it without attacking the precious dears opposite: it is time for the opposition to get behind Victorian industry, it is time for the opposition to get behind Victorian business, it is time for the opposition to get behind this stimulus package, and it is time for Mr Davis and Mr Baillieu to pick up the phone to the federal Leader of the Opposition, Malcolm Turnbull, and tell him to get behind the stimulus package.

Information and communications technology: Satyam Computer Services

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Minister for Industry and Trade. When did the government first become aware of the growing concerns about Satyam Computer Services, and why did the government not pay attention to the concerns expressed by the World Bank in February 2008?

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank Mr Rich-Phillips for this question. The situation with regard to Satyam is a very unfortunate one. It was greeted with disappointment not just by the Victorian government; it was greeted with shock and disappointment by governments around the globe that utilised Satyam's services and by the major corporations in Australia and around the world that also used its services. The concern is obviously a real one. I hope it was greeted with concern by the opposition as well — not with glee, as appears to always be the case when there is any kind of difficult news. When there is news about difficulty for jobs either in this state or nationally, members of the opposition appear to be happy — almost delirious with joy.

Honourable members interjecting.

Hon. M. P. PAKULA — To answer the member's question, I remember the date well. It was 7 January — —

The PRESIDENT — Order! I am sorry to interrupt Mr Pakula's flow, but I am not comfortable with the comment of Mr David Davis, 'You did a deal with those crooks'. I would ask him to withdraw that.

Mr D. Davis — I withdraw.

Hon. M. P. PAKULA — As I was saying, on 7 January, which was my 40th birthday, it became known that Mr Ramalinga Raju, the chairman of Satyam, had resigned as a result of some apparent or alleged fraud on his behalf. On 11 January the government of India appointed a new board to manage the company. The company initiated an immediate action plan to try to rescue the company and to ascertain its liquidity. As I understand it, the board is assessing options to ensure business continuity up to this day. It has appointed Boston Consulting Group as a business adviser. It has appointed Goldman Sachs and Avendus Capital to help identify strategic investments.

The Victorian government undertook absolute due diligence on Satyam. We relied, as did governments around the world and as did corporations around the world and in Australia, on Satyam's audited books — audited for some seven years by a major global accounting firm. They are the steps the government undertook.

The matter Mr Rich-Phillips refers to with regard to the World Bank is a completely different issue. That was a matter relating to, as I understand it, some spyware. It was not a matter relating to the company's finances or the actions of Mr Raju.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I ask the minister: what investment incentives has the government provided to Satyam or its associates since 2003?

Hon. M. P. PAKULA (Minister for Industry and Trade) — As is well established, the government does not divulge the specific details of incentives provided to companies to invest. Needless to say, there have been discussions both with Satyam and with Deakin University. In relation to any incentives, the vast bulk of those incentives are paid upon delivery. There has been a modest investment made at Deakin University — under $1 million — for some road infrastructure projects. Beyond that, the government, in order to protect the state's commercial interests, does not divulge specific incentives made or specific incentives offered to any corporation.

Aviation industry: government assistance

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Industry and Trade. Can the minister advise the house how the Brumby Labor government is working with the aviation industry to boost traveller numbers, and in particular can he highlight any recent events that have had an impact on the Victorian tourism industry?

Mrs Peulich interjected.

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank Mr Tee for his question, and I would respond to Mrs Peulich's interjection if I understood it.

The Brumby Labor government again continues to take action to ensure that the economy remains sound despite the impact of the current global financial conditions. As I indicated recently, last year we released the Victorian industry manufacturing statement, *Building Our Industries for the Future*, and one of the things outlined in that statement, as indeed was outlined by Mr David Davis this morning — a little bit behind time, but he got there — is the significance of investing in direct international air services between

Melbourne and key markets, because effective air connections are not just the key to our tourism industry, they are the key to business investment as well. Businesses need to know that they can get their people in and out of Melbourne without necessarily having to go through other hubs.

This government is committed to providing further opportunities for further investment in this vital industry, and we are, I think rightfully, proud of the achievements in this so far. We continue to attract airlines to Melbourne, and we are continuing to work with several other airlines to connect Victoria to new markets.

Mr Guy interjected.

Hon. M. P. PAKULA — Despite Mr Guy's interjection, it is a fact that Melbourne is now the Australian base for Tiger Airways and Jetstar. We have created new job opportunities in the areas of service delivery and maintenance. We are positioning Melbourne as the Asia-Pacific maintenance hub, and we are going to be creating more highly skilled job opportunities in the Victorian aviation sector.

On top of that, carriers like Emirates, AirAsia X and Etihad Airways are consistently increasing their direct flights to Melbourne. We have a proven commitment to attracting investment and air services to Melbourne, but all we get constantly from the opposition — and it is proven again today — are more cheap shots, sneering at every announcement and sneering at every success. It did it consistently with the previous minister — talking down the aviation industry, talking down the airline industry and talking down Victoria's success in attracting flights.

Today Mr David Davis appeared to get to the place where the Victorian government has been for the last decade or more. He now comes in here and says, 'We need more direct services'. For the 11 years that the Howard government was in place, what did the opposition do in terms of dealing with their federal colleagues? It had the federal Treasurer based right here in Melbourne, and absolutely nothing happened.

In the last quarter of 2008, we experienced a record number of passengers travelling through Melbourne.

Mr Guy interjected.

Hon. M. P. PAKULA — We had a record number of passengers travelling through Melbourne in the last quarter of 2008, and if Mr Guy does not think that is state business, I do not know what is.

There were 6.4 million travellers through Melbourne Airport during the December quarter — up 234 000 on the same time last year. Despite the global financial crisis and despite all the difficulties inherent in that, there were 234 000 more passengers in the December quarter than at the same time last year. That is a matter that does not bring excitement only to the government. We have seen the comments of Chris Woodruff, the chief executive officer of Melbourne Airport. He pointed to strong tourism and business travel, and he particularly remarked upon our major events calendar, a strong convention market enhanced by the opening of the convention centre and our position as a global university city as being key reasons for the increasing passenger numbers through the airport.

Honourable members interjecting.

The PRESIDENT — Order! I ask Mr Leane and Mr Guy not to engage in cross-chamber conversations. They know the deal. They know the rules.

Hon. M. P. PAKULA — Mr Woodruff's comments reflect the complementary nature of aviation and the tourism industry. He clearly gets it.

Mr Finn interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Mr Finn

The PRESIDENT — Order! I do not know whether Mr Finn's ears are painted on, but not more than 10 seconds ago I made the comment that cross-chamber conversations are not appropriate. I am going to use standing order 13.02 to suspend Mr Finn for 30 minutes for disrupting the business of the chamber.

Mr Finn withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Aviation industry: government assistance

Questions resumed.

Hon. M. P. PAKULA (Minister for Industry and Trade) — As I was saying, Mr Woodruff understands what the government understands: that a strong aviation industry complements a strong tourism industry — a $15 billion industry that provides jobs for over 180 000 Victorians. It is an industry that — —

Mrs Peulich — On a point of order, President, while you have been observing the minister's response, the minister adjacent to him was also engaging in cross-chamber conversation, which you have failed to observe. I would like to draw that to your attention, because the rules of the chamber clearly need to be upheld.

The PRESIDENT — Order! I get Mrs Peulich's drift. As Mrs Peulich rightly points out, I failed to observe; therefore, I am not prepared to rule.

Hon. M. P. PAKULA — As I said, Mr Woodruff understands that this a $15 billion industry that supports over 180 000 jobs. The success of the aviation industry is vital to the success of the tourism industry. The government's success in attracting aviation services to the state is complemented by our major events calendar and our convention centre, and all of that is great for tourism and jobs.

But there is one other point to be made in this space, and that is that the package announced by the Rudd Labor government on Tuesday would give tourism operators, which are predominantly small and medium enterprises, the ability to claim an additional 30 per cent tax reduction for eligible assets amounting to $1000 or more.

Mr D. Davis interjected.

Hon. M. P. PAKULA — Obviously Mr David Davis does not understand that federal announcements impact on Victorian businesses. The aviation industry is ready to fly people to Victoria, and tourism operators are ready to support them. Once again we call on those opposite to get on the phone to Malcolm Turnbull and tell him to get out of the way of this package that is going to support Victorian business.

Information and communications technology: Satyam Computer Services

Mr DALLA-RIVA (Eastern Metropolitan) — My question without notice is to the Minister for Industry and Trade. I ask the minister: how many meetings have ministers, staff of ministers' offices and senior Victorian public servants held with the discredited founder and head of Satyam Computer Services Ltd, Ramalinga Raju, and his senior managers since 2003 in India and in Australia, and will he provide the house with a full record of those meetings?

Hon. M. P. PAKULA (Minister for Industry and Trade) — As the honourable member well knows, I have been the Minister for Industry and Trade for 39 days — not back to 2003. How Mr Dalla-Riva would expect me to be able to provide the chamber with that sort of information is frankly beyond me.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — I would like to see an undertaking by the minister to provide that information for transparency and accountability, so I ask the minister: can he also confirm that no Victorian public servant or ministerial staff member has received either travel assistance or a subsidy from Satyam Computer Services or any other body associated with that company since 2003?

Hon. M. P. PAKULA (Minister for Industry and Trade) — The issue with regard to Satyam was handled, as I understand it, by the previous minister in his capacity as Minister for Information and Communication Technology. As the Deputy Leader of the Government indicated, the minister is not in the chamber today. I will refer the matter to him for his consideration.

Mr D. Davis — On a point of order, President, Mr Pakula is the Minister for Industry and Trade, and he is responsible for the provision of incentives and other facilitation, and that portfolio had responsibility in this, so the Minister for Industry and Trade has responsibility for this area.

The PRESIDENT — Order! The fact is that the minister has answered the question. As we know, he has the option of either answering or not. If he does, so long as his answer is relevant to the subject matter, then there is no room for anyone to move in terms of questioning the validity or otherwise of that answer. I assume the minister has finished.

Climate change: government initiatives

Ms PULFORD (Western Victoria) — My question is to the Minister for Environment and Climate Change, Gavin Jennings. Can the minister update the house on how the Brumby Labor government is taking action to ensure that Victoria builds on its reputation as a leader in the area of climate change?

Honourable members interjecting.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank members for their interjections in relation to how many legs I have to stand on. Regardless of how many legs I can confidently stand on at the moment, I can certainly stand confidently on the track record of the Brumby government in providing leadership in climate change and trying to make sure that we lead in the policy

development that has led ultimately to the development of the carbon pollution reduction scheme. We did that by commissioning the work of Ross Garnaut and others, by showing leadership in a variety of energy efficiency programs that are designed to support our households being more energy efficient and by trying to drive the transformation of the Victorian economy and Victorian businesses to make sure that they are more efficiently resourced so they can reduce their carbon footprint. That is something I appreciate today; if you can reduce your footprint, good and well.

The good news for Victoria is that we continue to roll out those programs, which are extremely popular in the state. As I indicated to the house yesterday when commenting on the green economy and jobs action statement that will be prepared by the government this year as part of its commitment to the statement of government intentions, the Victorian government welcomes the interest of the commonwealth government in this area.

The important element of the $42 billion stimulus package that has gone through the House of Representatives in the federal Parliament — and we hope it will proceed through the Senate shortly — is that significant investment will come in the field of improving the efficiency of Australian households. Indeed $4 billion of that $42 billion package has been designed to achieve just that.

The major element in the proposal is the provision of free ceiling installation to 2.2 million households.

Ms Pulford interjected.

Mr JENNINGS — This might be something I feel duty bound to comment on before I sit. The issue is that 2.2 million households across Australia will be supported with free ceiling insulation. The rebates will be made available to people who rent their households, so 500 000 houses will be involved. Landlords will be supported to enable them to increase the thermal efficiency of their properties.

The commonwealth has seen the merits of increasing the rebate for solar hot water systems. This is something the Brumby government understands; in last year's budget it committed $33 million to support the rollout of solar hot water systems across regional Victoria, which has been a popular program. About 4700 households throughout regional Victoria have taken up the opportunity of seeing how desirable that is, and we anticipate that with the federal rebate now it would be even more attractive and more Victorian citizens will take it up.

The Brumby government understands how important this package is to the people of Victoria. We see significant benefits to their wellbeing and their ability to deal with climate change pressures and with the pressures on their family budgets. The stimulus package as proposed by the Rudd government is highly desirable for Victorian citizens not only for this reason but for any number of other reasons.

We must lament at the moment that there has been opposition within the federal Parliament to the package. As my colleague Minister Pakula has already opened up to the opposition today, I join him in encouraging opposition members and other parties in this place to see what influence they can bring to bear with their federal brothers and sisters.

We are optimistic that David Davis, who actually believes in climate change, will get on the phone, and we hope Malcolm Turnbull will take his call. We are talking him up because there may be a chance of him getting through and sharing the message.

Mrs Peulich — On a point of order, President, it is a well-established rule that question time and ministers' answers to questions should not be used as an opportunity to criticise the opposition or debate the question. I ask that the President enforce those practices.

The PRESIDENT — Order! On the point of order raised by Mrs Peulich, I disagree that there is overt criticism of opposition members here or anywhere else, for that matter. Reference to them, of course, is there. The issue of debating is at the margins, and I am sure the minister is aware that he cannot debate his answer. On that basis Mrs Peulich is right. As I say, at the margins the minister was getting to the point of debating, so I ask him to pull back.

Mr Atkinson interjected.

Mr JENNINGS — The interjection was that Mr Atkinson was worried I was damning with feint praise. I think that might be his concern. We do not need to worry about that, because the Victorian government's interest is in the people of Victoria's interest. If any influence can be brought to bear by members of the opposition or other parties here, then Victorians will better off. That is the point I was making. I find it a bit hard to say that, beyond trying to unite this chamber, I was trying to do anything apart from pointing out some of the frailties in the federal jurisdiction of climate change deniers and those who want to stop the benefits accruing to the people of Victoria.

I think the Greens will encourage their leader, federal Senator Brown, to support this package. He has already shown some interest in Victoria recently by trying to save a crayfish around Brown Mountain. We thank him for that. If he can get mobilised in the interests of Victorian households and support them in being more climate change prepared, then good on him. It might be good if The Nationals increased their influence over their thought leader, federal Senator Barnaby Joyce, who has acknowledged he is a bit of a sceptic in this field. In fact he wears that as a badge of honour. But I know Mr Drum has no scepticism or cynicism in him. I know he is beyond that, and I know he will go straight to the heart of the matter of protecting Victorian households by having an influence over his federal brothers and sisters. If that can be done, then all of Victoria will be better off through the stimulatory package being approved by the federal Parliament.

Victoria will benefit and Victorian households will be benefit by being more climate change ready and more energy efficient. That is what we are going to encourage through the Brumby government's efforts in supporting our households being more efficient in the future.

Electricity: Katunga supply

Ms LOVELL (Northern Victoria) — I direct my question without notice to the Minister for Industry and Trade. Last Friday at 4.50 p.m. the dairy region of Katunga was without power due to a direction from the state government to Powercor to switch off parts of the grid when demand exceeded supply across the state. The blackout could not have come at a worse time of day for the dairy industry: milking time — a time when power is needed to run dairies, pump water to cool livestock and keep refrigeration going. What steps has the minister taken to ensure that a process is put in place to take into account the essential needs of the dairy industry during milking time?

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank the honourable member for her question about the dairy industry and the power blackouts. I think the opposition's concerns about the dairy industry and the energy sector would be more valid if in the seven years of the Kennett government it had added a single watt of extra power to the grid.

Mrs Peulich — On a point of order, President, in reference to the previous point of order on which you ruled wisely, could I just say that the answer the minister is beginning to give overtly attempts to criticise the opposition. I ask you to discourage him from doing so.

The PRESIDENT — Order! Mrs Peulich is correct. The minister is unable to overtly criticise members of the opposition or debate his answer.

Hon. M. P. PAKULA — This government has added 2000 megawatts of power, and there is 3000 more in the pipeline. We are constantly in discussions with industry groups, whether they might be the Australian Industry Group, the Victorian Farmers Federation, the Victorian Employers Chamber of Commerce and Industry and others about the economic situation more generally. I have done that as industry minister every week that I have been in the job. I have discussed with them a range of issues relevant to the economic performance of Victorian businesses, not just the power industry.

We have talked to them about the channel deepening project that the opposition has dragged its feet on. We have talked to them about the north–south pipeline to provide water certainty to Victorian businesses and consumers. We have talked to them about the food bowl modernisation project. We have talked to them about the goldfields super-pipe, which the opposition opposed before it supported. We have talked to them about the desalination plant. We have talked to them about the Regional Infrastructure Development Fund. All of these things provide certainty not just to the dairy industry but to Victorian business and the Victorian agricultural sector more generally.

As the Premier indicated in the other place a couple of days ago, he is having discussions with industry about what to do in circumstances where there is a repeat of the failure of the power grid. He has already indicated that more information needs to be provided to business and the community in a more timely way. They are the actions being taken by this government.

Supplementary question

Ms LOVELL (Northern Victoria) — I noted when the minister listed the industries he would meet with that he did not mention the United Dairyfarmers of Victoria (UDV). As the industry minister, has he met with representatives of the dairy industry, and if not, will he meet with them to discuss a solution that will ensure that selected power outages during milking time are never again allowed to impact on Victoria's critical dairy industry, an industry that produces around 30 per cent of the nation's milk — —

The PRESIDENT — Order! The member is not permitted to debate the question. The member has a supplementary question, but she was going off into the

great blue ether. She is restricted to her supplementary question.

Ms LOVELL — Has the Minister for Industry and Trade met with representatives of the dairy industry, and if not, will he meet with them to discuss a solution that will ensure that selected power outages during milking time are never again allowed to impact on Victoria's critical dairy industry?

Hon. M. P. PAKULA (Minister for Industry and Trade) — As Ms Lovell well knows, I have a long connection with the dairy industry. I dealt with the dairy industry for 10 years. Mr Vogels knows — he has been up there with me at the UDV offices on Collins Street when I have met with Airlie Worrall and other members of the United Dairyfarmers of Victoria board. Ms Lovell may not know that at the UDV conference dinner last year there were only two members of this Parliament there — Mr Weller from The Nationals and me. There was no-one from the Liberal Party. Mr Weller and I were the only two.

Honourable members interjecting.

Hon. M. P. PAKULA — To further answer Ms Lovell's question, over time I have had numerous discussions with people such as Ian Bird and Stephen O'Rourke. Ms Lovell might not know who they are. I do because they are the leading executives at the Murray Goulburn Co-operative Co. Ltd. I have spoken to them since I have been the minister.

Ms Lovell interjected.

Hon. M. P. PAKULA — Now we are going to name individuals. I have spoken and met with members and leaders of the dairy industry. As Ms Lovell well knows, I am also available to meet with the UDV, with Doug Chant, Airlie Worrall, representatives from Fonterra and Nestlé, Tatura Milk and any of the major suppliers in the industry at any time.

Planning: residential zones

Hon. T. C. THEOPHANOUS (Northern Metropolitan) — It is with great pleasure that I ask a question of Minister Madden.

Mr Barber interjected.

Hon. T. C. THEOPHANOUS — I never thought I would be in this position, but I am very pleased to be asking this question of him. My question relates to the minister's announcement of a review of residential zones in Victoria. I ask him to advise the house of the progress made towards implementing this important initiative.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Theophanous's interest in this matter and his question. I know it is very much of interest to the respective communities of members of this chamber. I thank him. Before I go into detail with my answer I want to express my disappointment at those in the community — many of whom are represented on the other side of the chamber — who have been alarmed by the discussion around these new residential zones. The discussions have all been part of Making Local Policy Stronger, an initiative of this government in conjunction with local government, and in particular the Eastern Region Mayors Group.

That group called for more certainty around strengthening a local policy, and we committed to that. We committed to what its members were seeking by releasing a discussion paper on residential zones last year. But much to the mayors' disappointment, much to my disappointment and much, no doubt, to the disappointment of people in the planning profession, some members of this chamber decided to make it a political issue, and rather than guaranteeing or seeking to guarantee to strengthen the impact and the input of local government, they wanted to see that diminished.

As well as that, what these mayors sought and what we seek is more certainty. I know my colleague Mr Pakula has talked about certainty today, but while we are trying to deliver certainty, others in this chamber would seek to undermine that certainty. When we talk of certainty, in particular we talk about certainty when it comes to housing and certainty when it comes to jobs. What could be more necessary at this point in time when we have enormous population growth in this state than providing more housing?

Mr Drum — More jobs!

Hon. J. M. MADDEN — And through it, more jobs — thank you very much, Mr Drum — because what is one of the biggest employment sectors in this state? The delivery of housing. On both fronts we need to support the delivery of housing, but in order to provide for that growth, in order to provide for and accommodate future housing needs and in order to provide more certainty about where people can live — and being inclusive rather than exclusive, like the opposition — we have to provide certainty for local government in particular by designating where growth can occur and where maybe it should not occur when it comes to housing.

It is about enabling and providing more diversity when it comes to housing. We can do this through new residential zones, and that is part of this review. Unlike others in this chamber, this government is committed to ensuring that the new zones are developed through consultation with key stakeholders.

Last year a discussion paper was released that generated more than 400 submissions from councils, community groups, residents and the housing development industry. But today I am pleased to announce the release of the draft residential zones for further public comment — additional consultation to make sure we get these right, because it is important that we get them right. These proposed new residential zones will provide councils with better tools to implement state and local planning policy. They will provide councils and local communities with more locally responsive controls that better provide for local housing needs.

Mr Drum interjected.

Hon. J. M. MADDEN — When I say that, let me explain what that means, Mr Drum. Predominantly in this community when people grow up in a particular area — and research will show this — those people do not want to move too far from the area that they know. But one of the most difficult things for either aged people or young people trying to find alternative accommodation in their local area — when they move out of home or look for their first dwelling or potentially their last dwelling because they are in the latter stages of their life — is that there is not the choice or diversity of housing in that local area.

Why not? Because there are those in this chamber who would seek to exclude people from their respective communities. What is particularly important with these residential zones is that we provide for a diversity of housing types and for more development where it is needed and where local communities want it, because that provides more housing opportunities for more people in more locations across the state.

We are determined to provide certainty when it comes to housing and determined to provide more jobs. We will do that and get it right through the draft residential zones, unlike others in this chamber — and we know who they are — who would prefer to scare or alarm the community. We will get on with the job of doing that and providing for prosperity in the future, even in the face of the economic climate worldwide, because unlike others in this chamber we are committed to making Victoria the best place to live, work and raise a family.

Port Phillip Bay: channel deepening

Ms PENNICUIK (Southern Metropolitan) — My question is to the Minister for Environment and Climate Change, Mr Jennings. Is the proposed introduction of a third dredger, the *Prins der Nederlanden*, in the channel deepening project in breach of his approval of the project and the Port of Melbourne Corporation's environmental management plan? What studies have been done to ascertain the impacts with regard to turbidity and other effects of more intensive dredging with a third dredger?

Mr JENNINGS (Minister for Environment and Climate Change) — The member's assumption that the circumstance that would lead to a third dredger being operated within the channel deepening project is a changed circumstance is correct; it is a change. She is not correct that it is outside the scope of my approval, because in fact I have amended my approval in accordance with my understanding of the environment management plan and my responsibilities under that proposal, and the administrative arrangements have been put in place to enable that to occur.

Supplementary question

Ms PENNICUIK (Southern Metropolitan) — The second half of my question was: what studies have been done with regard to the impacts of a third dredger in terms of increased turbidity, and have they been peer reviewed?

Mr JENNINGS (Minister for Environment and Climate Change) — Whilst the member may have believed that my answer was incomplete, it was not, in the sense that I can confidently assert that the conditions of the environment management plan do account for what would be the anticipated turbidity that would be occurring and how it would be monitored. In fact that had already been taken into account in accordance with the extensive EES (environment effects statement) processes that have been undertaken and the establishment of the environment management plan.

Economy: Victorian plan

Mr LEANE (Eastern Metropolitan) — I am glad I am still here to ask my question of the Minister for Industry and Trade, Martin Pakula. Can the minister outline to the house how the Brumby Labor government is supporting Victorian families through support for industry and business in Victoria?

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank — —

Mrs Peulich interjected.

Hon. M. P. PAKULA — I have not even started, and Mrs Peulich is off already, President!

The PRESIDENT — You get used to it.

Hon. M. P. PAKULA — Thank you for your guidance on that, President. I thank Mr Leane for his question. The Brumby Labor government is supporting the Victorian economy and supporting working families by delivering a long-term economic plan for the state. It is a plan that delivers strong investment and strong job growth in Victoria, and the best thing any government can do to support working families is to support jobs.

The way we have done that has been to make our economy the most productive and the most competitive in the country. It is widely recognised by financial and economic commentators around the country that this is the most productive and competitive economy of the states and has been for the last nine years.

We have had over $5.7 billion in business tax cuts, as I said earlier, with almost $1.5 billion of them in the last budget. We have been reducing our debt as a proportion of the economy, boosting services and quadrupling our infrastructure spend, and that has led to three things: jobs, jobs and jobs!

Mr O'Donohue — Where did you get that line?

Hon. M. P. PAKULA — Mr O'Donohue asks where I got that from. It might be a well-worn phrase, but it is no less relevant today than it has ever been. If you want to support working families, you have got to have your eye on jobs, jobs and jobs at all times. The actions we have taken have laid a sound and sustainable economic footing for this state. More than 450 000 jobs have been created in Victoria since 1999, with more than 40 000 of them in the last financial year. As well as being pro-working families, this government has created a climate that is pro-business and pro-investment, and that has seen this state develop into the no. 1 location for new investment in Australia.

As I alluded to earlier, we have built on all that by the manufacturing statement, the $245 million statement to support an industry that employs 315 000 Victorians — —

Mr D. Davis interjected.

Hon. M. P. PAKULA — It is easy for Mr Davis to be flippant about it, but 315 000 Victorians are employed in that industry, 270 000 of them full time. It is an industry that provides $30 billion of economic activity to the state. Through that statement, through a range of other initiatives and through the solid economy the Brumby government has created in this state, we are supporting Victorian families by protecting their jobs.

There is another string to that bow, which is the work we do in conjunction with our federal colleagues. We saw the fruits of that labour yesterday when the Rudd government announced a $42 billion economic recovery package. Its implementation can only be delayed by the Senate; it can only be delayed if certain people vote to deliberately increase unemployment, because that is what a vote against that package would be.

I know I have reeled off a lot of numbers, but I would like to reel off one more number, and it is one I think the opposition should write down if it wants to support Victorian jobs and Victorian working families. The number is (02) 6277 4022 — that is Malcolm Turnbull's number. Get on the phone, give him a ring and tell him to get out of the way of repairing the Australian economy!

Sitting suspended 12.54 p.m. until 2.03 p.m.

SERIOUS SEX OFFENDERS MONITORING AMENDMENT BILL

Second reading

Debate resumed.

Ms MIKAKOS (Northern Metropolitan) — Before question time I was outlining the reasons why I strongly support the Serious Sex Offenders Monitoring Amendment Bill. I was discussing how the bill and the whole serious sex offenders monitoring scheme err on the side of caution in terms of protecting the community — to the detriment of people who have served a period of incarceration because they have been convicted of serious sex offences. The reason this scheme was set up in the first place several years ago — I think it was in 2005 — was because of the very serious harm that can be caused to victims of sexual assault and the higher likelihood of reoffending by a sex offender, which has been established by statistics on recidivist behaviour. Statistics have been collated to show that particularly in the area of child sex offences there is a significant risk of reoffending behaviour.

The reason the bill is before us is that recently the Court of Appeal handed down a decision in the case of *RJE v. Secretary to the Department of Justice* which interpreted the serious sex offenders monitoring

legislation in a way that the government had not originally intended. This was particularly in relation to the assessment that the County Court and the Supreme Court are required to make in deciding the degree of probability that an offender will commit a further offence when assessing whether an extended supervision order should be imposed.

The Court of Appeal interpreted section 11 of the monitoring act as 'more likely than not' to reoffend or 'more than 50 per cent likely'. With all due respect to the esteemed judges of the Court of Appeal, the government does not consider that this was Parliament's original intention, and the bill before us seeks to clarify that it is appropriate that the threshold for likelihood should accommodate a much lower level of risk. This is because the harm that would be caused by an offender committing a sexual offence is so serious that it is appropriate that the Parliament impose a lower threshold as a relevant test for the courts. It is proposed that the bill enable a court to impose an extended supervision order where there is a risk of relevant offending that is 'both real and ongoing and cannot sensibly be ignored having regard to the nature and gravity of the possible offending'. I understand this is the test that has also been adopted by the courts in New Zealand.

It is very difficult for our courts to predict with any degree of accuracy whether an offender is or is not going to reoffend by committing another sexual offence. In making these determinations the courts are provided with clinical assessment reports that provide information about a combination of things like actuarial risk and empirically guided clinical judgements made by clinical experts who work with sex offenders. However, we know sex offenders come to the courts with a range of backgrounds and circumstances that can include intellectual disabilities and so forth, and it is not always possible for such actuarial assessments to be made about the percentage risk of an offender reoffending, so we need to have in place a test that is workable for the courts. Having regard to the seriousness of sex offending and the desire to protect our community, we believe the test that the bill seeks to introduce is workable and appropriate.

The bill is one of a number of reforms that the government has introduced to protect the community. Apart from the serious sex offenders monitoring legislation we also have the sex offender registration scheme and working-with-children checks. We have given the Adult Parole Board the powers to require high-risk child sex offenders to reside either within the perimeter wall of a prison or on prison property. During the last few years a whole range of legislation with the single-minded objective of protecting our community from the harm imposed by serious sex offenders has come before the Parliament.

It is important that the bill be expedited. I said right from the outset that the government appreciates the cooperation of the other parties in expediting debate on the bill in Parliament this week. It is important that we have certainty in relation not only to extended supervision orders in the future but also to those that have been handed down by the courts in the past. The bill validates existing extended supervision orders, notwithstanding what the Court of Appeal said recently. I think Victorians will welcome this bill in terms of its clarifying the law, providing that certainty and protecting our community. With those words, I commend the bill to the house.

Ms PULFORD (Western Victoria) — I am pleased to rise and speak in support of the Serious Sex Offenders Monitoring Amendment Bill 2009. I hope it will have a speedy passage through the Parliament today, as these amendments are certainly needed following the recent Court of Appeal decision in *RJE v. Secretary to the Department of Justice*, which has provided a possible interpretation of circumstances where serious sex offenders might have a likelihood of reoffending. I do not believe this reflects the intention of the Parliament in passing the original legislation, and these amendments seek to clarify that.

The bill provides that the word 'likely' in the test for extended supervision orders under the Serious Sex Offenders Monitoring Act 2005 will depend on a risk of relevant offending that is real, ongoing and cannot be ignored. This is a sensitive area of the law in which there needs to be a balance between the rights of offenders having served a sentence for a prior offence and the rights of those in the community who need to feel safe from the threat of sexual assault.

Members would be all too aware of the impact sexual assault has on our community, particularly the very severe and lifelong impact it has on victims. This legislation deals with serious sex offenders, including those who seek to sexually assault children, and repeat offenders. The Serious Sex Offenders Monitoring Act deals with offenders who are assessed as having a likelihood or a propensity to reoffend and thus pose a risk to society after their release.

It is of paramount importance that women, the group in our community most likely to be victims of sexual assault, feel safe, and also that we protect Victorian children in every possible way that we can. In balancing the rights of offenders who have done their

time with the rights of those in our community to feel safe, we need to be very conservative and err on the side of caution to absolutely minimise any chance of reoffence. Our constituents would expect no less of us in this regard.

Prior to the introduction of this bill, sections 11 and 23 of the Serious Sex Offenders Monitoring Act could always be taken to have permitted a determination that an offender was 'likely' to commit a relevant offence on the basis of a lower threshold than 'more likely than not'. The effect of these amendments is simply to override what was said in *RJE v. Secretary to the Department of Justice* in respect of the requisite degree of likelihood being 'more likely than not', exercising a great degree of caution in the way in which these assessments are made.

In the application of this legislation there are clinical assessments that are made where offenders have a tendency to this type of activity and a possibility of reoffending. The tiniest risk of reoffence is too much or too great. It is therefore incumbent upon us to return the law and the interpretation of it to what was originally intended and to ensure that Victorians can feel protected by these laws.

It is important that the legislation receives the support of the Parliament at the earliest opportunity, because at any given time there are applications in the system regarding extended supervision orders for serious sex offenders who have completed their sentences. The timely passage of this legislation is essential. With those few words I encourage members to support the bill and to correctly restore the legislation to its original intent, ensure that all members of Victorian society, particularly children and young women, are safe, and to minimise any possible risk of sex offence.

Motion agreed to.

Read second time.

Third reading

Hon. J. M. MADDEN (Minister for Planning) — By leave, I move:

That the bill be now read a third time.

In so doing I thank all members for their contributions.

Motion agreed to.

Read third time.

MAJOR CRIME LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 4 December 2008; motion of Mr LENDERS (Treasurer).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The coalition parties are not opposing the Major Crime Legislation Amendment Bill 2008. The impetus for this bill was a report from the special investigations monitor to Parliament in June 2008 which made a number of recommendations with respect to the Major Crime (Investigative Powers) Act 2004, the Casino Control Act 1991, the Racing Act 1958 and the Surveillance Devices Act 1999. Primarily this bill is about adopting the recommendations from the special investigations monitor in its report of June 2008.

The first key provision of the bill is to alter the definition of organised crime offence to provide that an organised crime offence will include an indictable offence punishable by level 5 imprisonment or more and that has the purpose of obtaining sexual gratification where the victim is a child. The reason for the definition being extended to cover the purpose of obtaining sexual gratification is that many of the existing organised crime offences are primarily those where a profit motive is involved — the pursuit of profit, power or influence — and the current regime for organised crime investigation and prosecution that hangs from the Major Crime (Investigative Powers) Act is therefore constrained to those types of offences. The intent in expanding the definition to include an act for the purpose of obtaining sexual gratification is to allow offences that involve paedophilia and particularly paedophile rings to be picked up within the organised crime regime and subject to the same kinds of coercive investigative powers that exist for drug and other fraud-related organised crime activities.

The bill also adopts a number of recommendations that arise from the special investigations monitor's report, including establishing new procedures for the revocation of applications against a coercive powers order and the appointment of a special counsel to represent an absent party. Special counsel may be appointed where it is deemed inappropriate for the applicant in the revocation application to have access to all the evidence that is relevant to that application and where the prosecution investigators may believe it is not appropriate at the time for the applicant to have full access to the material that is being used against him in order to have the coercive powers order made in the

first place. There is the option for special counsel to be appointed and to act on their behalf in the application.

There is some concern at the way in which this provision will work, how special counsel will be appointed, who will pay for them and the capacity for the person bringing the application to adequately brief the counsel appointed for the case when they do not have access to the evidence.

The bill also alters the provisions related to the cessation of confidentiality notices. It changes the definition of police station to include a place where a counter inquiry service is provided to make a distinction between an ordinary suburban police station and other premises where investigations and interrogations under the coercive orders acts may take place. It gives jurisdiction to the Supreme and County courts to determine disputes having regard to the application of legal professional privilege made to the chief examiner during the examination hearing. It requires the court to allow submissions from the chief examiner or the chief commissioner or witnesses who are affected before issuing directions as to the publication of evidence and information. It enables an application for warrants for the arrest of a witness to be made in the Supreme Court or County Court and extends the secrecy provisions under section 68 of the Major Crime (Investigative Powers) Act to cover all police and public servants working for Victoria Police as well as persons engaged by the chief commissioner to provide services.

The bill also makes amendments to the Casino Control Act 1991 and the Racing Act 1958 with respect to the procedures where an application is made in the Supreme Court to review a decision by the chief commissioner to exclude a person from the casino or racecourse. I recall this had some currency in 2008 with a decision by the chief commissioner to exclude some rather high-profile individuals from both the casino and racecourses.

The bill provides that a hearing under that provision may be made by a number of methods, including a closed court, a hearing without notice, or where evidence is given by confidential affidavit that is not disclosed to other parties. A special counsel may be appointed in that circumstance to allow evidence to be presented to the court without the subject of the application having access to the evidence where it is not deemed appropriate. That raises the issue of the capacity of the applicant to appropriately brief the special counsel where they do not have access to the evidence.

The other amendment in the bill is to the Surveillance Devices Act, which provides that technical experts can provide assistance to law enforcement officers when installing, using, maintaining and retrieving surveillance equipment. This provision, we believe, is basically in the legislation to clarify beyond doubt that law enforcement agencies can engage technical experts in the use of surveillance equipment. Obviously it is a topical issue, given the way in which surveillance material has been leaked, which should be a matter of great concern to this Parliament.

One area where the bill does not address the recommendations of the special investigations monitor (SIM) is the first recommendation of that report with respect to the independence of staff of the chief examiner from staff of the chief commissioner — for example, particularly where coercive powers orders are made. The recommendation was made by the special investigations monitor that the chief examiner should have the capacity under the relevant public sector legislation to have their own staff, independent of police staff, so that people who are determining applications for coercive powers orders are not also involved in executing those orders. In the absence of an independent commission against corruption in this state it would seem that that type of separation between the staff involved in those two functions, as recommended by the special investigations monitor, would be an appropriate step. We are at a loss to understand why the government has chosen to ignore that recommendation, which was the first recommendation of the special investigations monitor in the report of June 2008.

The other area that I touch on relates to the inconsistency of the extension of the various coercive powers orders with the government's commitment under the charter of human rights, which was introduced to the Parliament the year before last. Time after time the government delivers its statements of compatibility with the Charter of Human Rights and Responsibilities, and consistently we see legislation brought into this place which offends against that charter, particularly in the area of law enforcement. Those matters are glossed over in the statement of compatibility that the Attorney-General uses when introducing legislation.

This is a matter that has been commented upon numerous times by the Scrutiny of Acts and Regulations Committee. Indeed, it commented with respect to this legislation that the statement of compatibility with the charter was inadequate in regard to the coercive provisions and that they were inconsistent. It is a matter that I have to say this side of the house finds particularly amusing: that the

Attorney-General, who was a great advocate of that charter, repeatedly fails to adhere to that charter with the legislation that he brings before this house.

The opposition parties believe that the nature of some of these amendments is worthwhile. As I said, they arise primarily from the recommendations of the special investigations monitor (SIM), most notably with the omission of the SIM's first recommendation. However, the coalition parties will not oppose the bill.

Ms PENNICUIK (Southern Metropolitan) — I am happy to contribute to the debate on the Major Crime Legislation Amendment Bill 2008. As far as we can see in looking through the bill, it basically addresses operational and technical issues that have been raised by the special investigations monitor (SIM) in his report on the operation of the Major Crime (Investigative Powers) Act, which was tabled in Parliament in June last year.

The SIM made a range of recommendations, and the bill appears to implement most of those. Importantly, it extends the definition of organised crime to encapsulate, include or capture organised paedophilia rings, which, as people would be aware, are organised to quite a high degree and require the types of investigative powers that exist under that act for the police to work and be able to deal with those types of crimes. They are not ad hoc crimes. Paedophilia rings are in fact highly organised rings of criminal activity.

The bill establishes new procedures for the court to follow when hearing an application for a revocation of a coercive powers order. Those procedures are designed to protect from disclosure the sensitive information that has been obtained or has been sought to be obtained under a coercive powers order. The amendments in the bill prescribe procedures within which the court may determine the matter by way of a confidential affidavit in a closed court or at a hearing in the absence of one or more parties.

I looked into that issue, because it engages the ideas of liberty, of fair hearing and of openness of the court. Having spoken to people about it and taken some advice, and even looking at what the Attorney-General had to say, I think there is a balance there between a fair hearing and protection of sensitive information that is needed in the types of investigations that are carried out under this act. It is always difficult to get the right balance and it is also difficult to deal with organised crime, so it is not an easy area in which to get the balance right. I feel in this case it is. The bill provides that those confidentiality notices will cease to be in effect once they are no longer needed or after five years. Extensions can be applied for if needed.

The bill clarifies that the Chief Commissioner of Police or the chief examiner and a witness whose interests are affected by a direction of the chief examiner restricting publication or communication of evidence or other information will have the opportunity to make a submission to a court that is considering whether or not to release that restricted evidence or other information to a defendant in criminal proceedings or to that person's legal representative. In making the decision the court must take into account the public interest.

The term 'police station' is clarified in the bill to basically mean a police premises with a public counter for the purposes of clarifying where coercive questioning can and cannot occur. Under the bill it would not occur at what is now deemed to be a police station — that is, a police premises with a public counter.

The Magistrates Court will no longer determine any dispute regarding legal professional privilege that arises during an examination hearing. This jurisdiction will be conferred upon the Supreme Court and the County Court only, in line with the recommendations of the special investigations monitor.

The bill makes a technical amendment to the Surveillance Devices Act to allow that civilians may now provide assistance or technical expertise to police officers responsible for a surveillance devices warrant. I understand that is just a practical measure to allow the provision of technical expertise that may not be available within that department. However, I raise the concern that was expressed in the second-reading debate in the lower house — that is, there are ongoing issues with information about surveillance activities that are taking place being leaked to organised criminals. That is something the public is concerned about. Victoria Police needs to pay a lot of attention to whom it allows access to that, and I understand it is looking into that issue.

The bill provides for a process that the court can apply where a person challenges an order made by the chief commissioner excluding that person from attending or remaining at the casino or a racecourse. In most cases that would be a person who has been involved in organised crime. The bill also establishes a procedure that the court must follow to protect sensitive information while protecting the public interest in terms of who is allowed to remain on those premises.

I also raise the issue that was raised by Gordon Rich-Phillips — that is, why the first recommendation of the special investigations monitor regarding the staffing arrangements for the chief examiner was not taken up in the bill. Otherwise, the Greens will support the bill.

Mr TEE (Eastern Metropolitan) — As has been mentioned, this bill is the government's response to the report by the SIM (special investigations monitor) tabled in Parliament in June last year. It is another layer in a very considered response by this government to organised crime. What the SIM was required to do under the legislation was consider the powers that were in place and how effective they were. The SIM found that there is a need for the existing coercive powers because organised crime is ongoing and indeed becoming more sophisticated in its approach.

There are several models being used in a number of states to deal with organised crime. The SIM — and I stress the independence of the SIM — found the Victorian model was working well and has been effective in achieving its objectives. The SIM made a number of recommendations that would enhance the existing model. It is important to note that we now have had an independent body overseeing the regime we have in place to deal with organised crime, and that independent body said the vehicle we have in place is effective. However, the bill makes a number of amendments to the legislation which will continue to enhance and develop our response to organised crime. The bill delivers on the recommendations of the SIM.

The bill expands the range of offences covered by the act so that it includes paedophilia where that can be described as organised crime — that is, where it involves two or more offenders and is part of an organised crime syndicate.

The issue raised by Ms Pennicuik related to the fact that the bill confirms that technical experts such as electrical engineers can assist police officers when they exercise their powers under the Surveillance Devices Act. I am advised that their role is to help in the installation side of the work rather than the monitoring side. To address Ms Pennicuik's point, they are not really involved in the listening as their expertise is of a technical nature, so there is not the risk that Ms Pennicuik identified of information that has been picked up through the monitoring process falling into the hands of people it should not.

The bill also amends the Casino Control Act and the Racing Act provisions, under which the chief commissioner, I think it is, can exclude people from the casino or from racecourses. These exclusion provisions are really directed at crime figures and are an important tool for fighting organised crime and fighting money laundering.

And of course, as they should be, these exclusion orders can be reviewed by the courts. Concern has been raised that, as part of such a review, there is a risk of the disclosure of sensitive police intelligence information — the information the police have used to form the basis of a decision to make an exclusion order. Of course that sort of disclosure can be prejudicial. It can jeopardise investigations or prosecutions and it can put at risk the lives of people identified through the release of that information.

What the bill does, quite sensibly, is put in place a process to limit the disclosure of that sensitive police intelligence where it is appropriate, and it provides a number of mechanisms. For example, we could have a confidential affidavit or we could have a closed court hearing, and, where appropriate, parties could be excluded from proceedings. There are a number of models that can be used to ensure that information that should not be disclosed is not disclosed. But we have to get the balance right, and to make sure that people are not disadvantaged there is a provision which allows for the appointment of a special counsel to represent the interests of a party that has been excluded.

This bill is another important step in the government's program of tackling organised crime and corruption. It is the government's ambition to tackle organised crime root and branch. We have here an important endorsement from the independent SIM, and, as I said, the bill really goes to the heart of organised crime. It is an important bill for tackling these important issues.

It is one of a number of bills and other steps as well as a number of debates we have been involved in in relation to organised crime. Having taken part in debate on this subject a number of times, I can almost anticipate the opposition's response. Generally someone from the opposition — indeed I think there was in the other place — will stand up with the tried and true lines of the opposition's response to these issues. I think it is clear that, in relation to some members of the opposition at least, it is almost a bit of a one-trick pony, with only one speed or one approach, and it is dusted off for these debates every time. It always involves banging on about the need for an independent commission on corruption. Notwithstanding the fact that we have a model that has been independently verified as working, I have no doubt we will again find the opposition banging on about an independent commission.

If you read the SIM report, you see that there is no substance to that worn-out call. There is no policy foundation behind that call. In circumstances where we have got a model that has been effective and is working, the call is almost a lazy response reflecting a failure to develop any new or original policy ideas. More concerning for this chamber in this debate is that the call for a commission of some sort reveals a failure to properly engage in the issues and the debate.

It is with some regret that I anticipate the ongoing response from some in this chamber to these issues and this bill. As I said, I think that response is a failure, and I hope those opposite take the issues seriously, engage with them and have a serious look at some of the work that is being done rather than falling back on the tired old lines they continue to use. With those few words, I support the bill.

Ms HUPPERT (Southern Metropolitan) — The Major Crime Legislation Amendment Bill will support our ongoing fight against serious crime by implementing the special investigations monitor's recommendations on the major crime legislation in a number of key aspects. Firstly, it expands the definition of 'organised crime offence'. Under the current regime 'organised crime' applies only to an offence which has a purpose of obtaining profit, gain, power or influence. The bill broadens that definition to include an offence which has a purpose of sexual gratification where the victim is a child. The purpose of this is to ensure that organised paedophilia networks are caught up in the definition. However, the other limbs of the definition will remain unchanged, in that an organised crime offence must involve two or more offenders, involve substantial planning and organisation and form part of a systemic and continuing criminal activity.

Other amendments brought in by the bill change the standing of and the grounds on which people can apply for revocation of a coercive powers order. These changes are designed to ensure that the procedures do not lead to the release of confidential information that will cause a danger to any person and to ensure the protection of confidentiality of intelligence in the public interest. The purpose is to ensure that the courts have clear legislative procedures through which they may determine the matter, either by way of a confidential affidavit, in a closed court or hearing in the absence of one or more parties or by a combination of these methods. There is no limitation on the right to apply to challenge a coercive power order.

One of the other changes made by this bill is that it brings in three recommendations relating to confidentiality notices. Currently there is no time limit on when those confidentiality notices cease. They are now going to be in place for only five years, but there is provision for an application to be made to the Supreme Court to extend the operation of a confidentiality notice beyond five years if certain circumstances are satisfied. The amendments provide greater flexibility, ensuring that confidentiality notices do not unnecessarily continue to have effect for more than five years unless absolutely required.

As we have heard, the bill also amends the Casino Control Act and the Racing Act 1958. Those amendments are similar to amendments to the Major Crimes Act and relate to the revocation of orders of exclusion from casinos or racecourses. Again the process is designed to protect intelligence upon which the chief commissioner bases his or her decision to make an exclusion order. The bill provides clear procedures through which a court may determine a review — that is, by way of an affidavit or in a closed court or hearing in the absence of one or more parties.

In summary, the bill makes a small number of quite technical and important amendments to the Victorian legislation related to major crimes. It implements the government's community safety commitment to guard against the potential disclosure of sensitive police intelligence arising from challenges to casino and racetrack exclusion orders as well as ensuring that we are protected from paedophilia networks. I commend the bill.

Motion agreed to.

Read second time.

Third reading

Hon. J. M. MADDEN (Minister for Planning) — By leave, I move:

> That the bill be now read a third time.

In so doing I thank members for their respective contributions.

Motion agreed to.

Read third time.

ANNUAL STATEMENT OF GOVERNMENT INTENTIONS

Debate resumed from earlier this day; motion of Hon. M. P. PAKULA (Minister for Industry and Trade):

> That the Council take note of the annual statement of government intentions for 2009.

Ms MIKAKOS (Northern Metropolitan) — I want to say how proud I am to be able to speak in support of the 2009 annual statement of government intentions. This is the government's second such annual statement, and I congratulate the Premier on delivering what is a visionary statement for Victoria.

We know there are some very serious global economic problems at the moment, and Australia is not immune from the constraints that are being experienced by local financial markets. It is very worrying to all of us that our major trading partners are experiencing significant economic downturn at the moment. China, Australia's major trading partner, is experiencing a significant economic slowdown which will obviously have an impact on the Australian economy.

In the annual statement of government intentions the Premier has flagged very clearly that the Victorian government will do everything it can to ensure the Victorian economy remains strong and that we keep Victorians in jobs. I congratulate him on setting out in that statement a whole range of areas in terms of the legislative program of this government for the year ahead that focuses on the government's plan to invest in infrastructure, skills and local industries that will keep the Victorian economy strong and competitive by securing old jobs and generating many new ones.

The year ahead will be a challenging one for all our constituents and all Australians. We want to ensure that our strong track record in sound financial management continues and that we are able to provide every opportunity to Victorians for the future. We know that we have struggled through difficult times in the past, and we have done that by working together. Both the Premier and the Prime Minister have flagged very clearly that we need to have a collaborative approach when it comes to these issues. That is why it has been disappointing that within the last 24 hours the federal opposition has attempted to delay and frustrate the federal Labor government's stimulus package that would provide a range of benefits for Victorians and for Australians as a whole.

When I made a very brief members statement on Tuesday after the Premier delivered his annual statement of government intentions in the other house, I reiterated the need for us to have that collaborative approach. The Premier said in his statement that we need to put partisan politics aside and work collaboratively. That is why I was very disappointed when Mr Barber was quoted in one of our local newspapers — and I quoted him on Tuesday — as saying he intended to work with the Liberal Party, his ongoing ally, to oppose and frustrate the government's legislative program.

It is time we put aside these partisan political strategies and focus on the serious threat facing our nation. I see it as an economic tsunami that is coming our way, and we all need to ensure that as parliamentarians who have been elected to serve our constituents we work together in the best interests of our state.

I congratulate the Minister for Planning, who is in the house at the moment, and the Premier on the significant announcement concerning the types of legislative and other approaches the government will be taking in the planning portfolio to ensure we do not have unnecessary delays and impediments in the planning process and that we keep the construction industry in Victoria strong. As an industry it is a major source of economic activity in Victoria. It is a major employer, and it is positive that the number of housing approvals remains strong at the moment and that housing prices remain affordable in Victoria.

We need to ensure that we allow people to take advantage of declining interest rates by keeping them in employment so they are able to pay off their mortgages and live the great Australian dream of buying and owning their own homes. That is why the statement of government intentions unashamedly focuses on jobs. Earlier today the Minister for Industry and Trade used the old expression 'Jobs, jobs, jobs'. We say to the Victorian public that that is going to be the government's priority for the year ahead.

We have also outlined our plans for fairness for all families, greater livability for communities and environmental sustainability in the face of drought and climate change. The Premier's statement outlined a plan to improve Victoria's infrastructure. The amount already spent on capital works is a record in our state's history. The Victorian transport plan, which was announced in December last year and is also referred to in the annual statement of government intentions, has a commitment to a historic package of expenditure to deliver new trains, trams and buses to expand and strengthen our public transport system.

During the course of yesterday's debate on public transport I spoke about the fact that my local community has already welcomed recent improvements to the local public transport system, such as the new buses in growth corridors through Whittlesea and Hume in the northern part of my electorate. Constituents welcome the expansion of the Epping rail line to South Morang, which has been included in the Victorian transport plan.

They also welcome the duplication of the rail bridge over the Merri Creek, the opening of which I attended last week. It will allow for additional capacity on the Hurstbridge and Epping lines for the 60 000 commuters going to and from work and school every day in the northern suburbs. The annual statement of government intentions flags that the government will put in place legislation to ensure that this type of expenditure becomes a reality as soon as possible for the benefit of our constituents and local jobs.

The annual statement of government intentions also flags investments in water projects, many of which have already been announced by the government. These projects include the improvement to irrigation infrastructure, the construction of Australia's largest desalination plant and many other projects that are about securing our state's water future.

It has been disappointing to hear the Greens political party continue to criticise the desalination plant proposal without indicating to Victorians exactly what is the alternative. What are the Greens proposing we do to provide that additional water we require not just for our current population but also to account for future population growth? We know that we are experiencing a population boom in our state at the moment. Are they proposing that we force everybody to drink recycled sewage water, because that is the alternative? Other states have been considering the options.

It is important if we are going to hear criticism and opposition to things like the desalination plant that they are honest enough to tell Victorians what would be the alternative. I can tell the house from speaking to many of my constituents about this issue that there are not many supporters of drinking recycled sewage water out there!

The annual statement of government intentions also flags many other infrastructure projects that are already taking shape or are about to take shape in our state. There are references to channel deepening, and we know the significance of that for our state's economy. Also mentioned is the recent opening of the Melbourne Recital Centre by the Premier, which I particularly welcome. It is important that we are seen not only as the sporting capital of Australia but also as the arts capital of Australia, given the many exciting exhibitions and cultural offerings to Victorians. Also referred to in the statement is the Melbourne convention centre project and the Melbourne rectangular stadium, which also strengthens our reputation in the sporting area.

The statement also refers to a fairer go for families. It talks about continuing the work the government has done in the areas of education, health and training. This government has always said that education is its no. 1 priority, and it will continue to be so in the future. We are looking at implementing a science and maths strategy in schools. We are creating new specialist centres, and I particularly welcome the fact that one of these specialist centres is going to be located in the northern suburbs of Melbourne.

I also look forward to Victorian schools being the beneficiaries of Prime Minister Kevin Rudd's largesse that he announced yesterday as part of the federal Labor government's stimulus package. The plan also flags the government's intentions to continue to expand hospital elective surgery capacity, to improve our emergency departments and to cut waiting lists. That builds upon the many capital works that have already benefited my local hospitals, including the elective surgery centre at the Heidelberg Repatriation Hospital, the expansion of beds at the Northern Hospital, the new Royal Women's Hospital, and many other such improvements that we have already seen.

In terms of its support for families, I particularly want to note the importance of the government's commitment in the area of public and social housing. The government has already boosted funding in this area with a record $500 million boost. I particularly want to congratulate Richard Wynne, the state Minister for Housing, for having recently concluded a very good outcome in terms of the commonwealth-state housing agreement. I thought it was very interesting that Ms Lovell, who is in the house at the moment, referred to this issue a couple of days ago, because I remember it was in the last few months of the Howard government that it was that government's failure to come to state governments with a proposal for continuing that commonwealth-state housing agreement in the future that was creating a lot of difficulties for all the states in terms of addressing the needs that exist in our community. I found it interesting that Ms Lovell had the cheek to come in here and complain about what we secured from the federal government in this area when it was actually her federal colleagues who had been holding up needy families in this state from being able to get a roof over their heads

by unnecessarily delaying for months the negotiations of the commonwealth-state housing agreement. I congratulate Dick Wynne on getting a very good outcome for Victoria through that process, and I congratulate him for pushing very hard on this issue. I am sure that that has also been heard in Canberra.

I particularly want to applaud Kevin Rudd. When he was elected as Prime Minister one of the first things he did was to talk about homelessness, and that is an issue that has not been focused on by a federal government for a very long time — probably since the Hawke-Keating years and even going back to the Whitlam government. I applaud the fact that Kevin Rudd has made this a priority area and that in the stimulus package that he announced yesterday he made a very significant commitment to new social housing that will benefit needy families across Australia. Victoria can expect to receive upwards of 5000 new units of public and social housing as a result of this.

In my electorate, Northern Metropolitan Region, sadly we have the highest demand for public housing in our state. I deal with many of these needy families on a weekly basis, and my staff deal with them usually on a daily basis. I know the need that exists out there, and I know that the economic circumstances are already putting additional pressures on families, needy seniors and others, including marginalised members of the community who might be experiencing mental health problems and other types of problems. So I really welcome this allocation of funds in yesterday's stimulus package, because I know it is going to make a very real difference to my local electorate and in fact to the whole of the state.

But as I said at the outset, it has been disappointing that despite having a much-needed financial stimulus package announced yesterday, we have a federal Liberal opposition in Canberra that is trying to block the passage of this package at the moment. I think Australians will judge the federal Leader of the Opposition very harshly for that. If you look at the US Congress and the spirit of bipartisanship that has existed there between Democrats and Republicans both in the last few weeks of the George W. Bush administration and also since Barack Obama took office, you will see there has been a very strong degree of bipartisanship to try to turn the US economy around. As I said, I think Australia is about to be hit by an economic tsunami, and we need to make sure that we put political partisanship aside for the moment and work together to ensure that we do everything we can to keep our Victorian economy going strongly.

The whole concept of an annual statement of government intentions is a very welcome one from my perspective and that of my constituents. It is something that has happened now for the second time. All of our constituents have an opportunity to comment on the government's legislative program. It has been posted on the internet, and there are opportunities there for our constituents to send feedback not only directly to the Premier but also to all of us as their local MPs. I look forward to my constituents taking up that opportunity and providing me and the government with that feedback.

I think this is a visionary statement. It is a statement for our times. It is a statement that addresses the economic circumstances of our times. It is a statement that puts jobs front and centre, as it should. It is a statement that provides a fairer go for families and also addresses issues like climate change. I congratulate the Premier and the cabinet on the development of this statement, and I encourage Victorians to provide the government with their feedback. I commend the statement to the house.

Mr LEANE (Eastern Metropolitan) — At the outset I congratulate the Premier for having the courage to introduce to the Parliament an annual statement of government intent. It is easy to criticise people who do nothing on one front, because there is only one criticism to make, and that is that they do nothing.

It is easy to criticise if you do a lot on a number of different fronts. You leave yourself open to more than one form of criticism if you do nothing, and you leave yourself open to even more criticism if you have the courage to say from the outset what you intend to do on those number of different fronts. Again I commend the Premier for his courage in introducing this annual statement of intentions.

I want to touch on some areas of the statement. It can be easily accessed on the website, so it is open to all Victorians to read what they may like or what they may not like. Something that I like is the ongoing commitment to the building of infrastructure. I echo what Ms Mikakos said and refer to the additional commitment to supporting the important new infrastructure of the federal government.

The Melbourne Convention Centre, which will hold its first convention this year, has been a big project; it will be an important facility in Victoria for years. Having worked in the building industry, I have a number of good friends who are plumbers, electricians and carpenters; some worked on the project. They had well over a year's work on that construction site, and that

work kept them and their mates going for at least a year.

I want to touch on a few other projects. Only recently the Melbourne Recital Centre was opened. I also know some people who worked on that project, and the fact that I know their faces and names has made me realise how important work on these projects is for them. I echo the disappointment of other members here at the federal opposition's apparent intention to try to block the passage of the new Rudd government's stimulus package because it would provide even more construction job opportunities.

One of the most important initiatives announced again in the Premier's statement is the ongoing commitment to the $1.9 billion Building Futures program which will renew, rebuild and/or renovate all Victorian schools. That amount of money has not been put into the system for 50 years, but now the Brumby government has committed to this process.

In the past few months I have been privileged to go to official openings and have a good look around at some of these schools. I attended the official opening of the new Gladesville Primary School. The old school had been levelled, and the kids and teachers were being accommodated in temporary classrooms, libraries and so forth. They were delighted to move into their new school.

I can remember talking to that school's principal at the time of the announcement that Gladesville Primary School would be rebuilt from scratch. While I was visiting the school then, some journalists from one of the local newspapers arrived to cover that announcement; they took a photo of the principal and me at the end of the school corridor, but the interior of that old school was so dark that you could not identify who was who in the photos.

I am really excited about this development, because the new school infrastructure is designed to bring in a lot of natural light; its interior will be bright and as environmentally friendly as possible, making it a fresh place for students to learn. They will want to be at school — and it makes a big difference if they actually want to be there!

Karoo Primary School is another school in Eastern Metropolitan Region where a renovated section was opened in the past few months. It has similar architecture to that at Gladesville Primary School, with high windows in the corridors that allow light into the classrooms.

One of the new buildings there incorporated the existing gym. One wall of the gym was removed, creating a huge space for the students to enjoy. Now all the students can have assemblies together, which is very important for the school community and the parents who attend assemblies.

Also in the past few months I was lucky enough to attend the official opening of the new buildings at the Upper Ferntree Gully Primary School. It has a fantastic new library, which is already being enjoyed by the students.

As I said earlier, such a large amount of money has not been put into the system for 50 years. The new school designs that I just mentioned make a huge difference to the way in which students learn. The principals and teachers have a lot of input into how new learning areas are to be built. Many of the schools want, and are getting, classrooms with concertina walls that can be pushed back so as to open up huge spaces. If there is a grade 5 or grade 6 composite class, or just a grade 6 with a number of different classes, the teachers can either isolate one class or they can open the space up to all the grade 5s and grade 6s. They say that flexibility is important as it allows them the opportunity to vary the way they teach.

I will refer to a couple of other events I have attended. One was the opening of the Lilydale Medical Centre. The people I met there are delighted with the facilities at the centre, with another section being opened late last year. People are also delighted about funding being committed to the Ringwood transit city. I know how important that project is to them through having been involved with a number of community committees.

Late last year I accompanied Richard Wynne, the Minister for Housing, when he opened some new affordable housing units in the outer east. I commend Minister Wynne and the government for their funding commitment to social housing and a number of big projects, including the crisis centre to be located in the middle of town; it will be able to accommodate over 100 people.

In the past few months I have been to primary schools, health facilities and new housing facilities. Local residents I met at those places could not be happier with the new facilities, yet the opposition has come in here this week and acted in a bullying way. The hot weather last week affected a couple of the facilities, but the opposition is saying there are people out there with baseball bats. I have not found anyone out there with a baseball bat! It is hard for people to have baseball bats if we are delivering these sorts of projects. The

opposition members are flying high, but their leader in the federal Parliament has shot them down a bit, because not to support extra federal money for these sorts of projects is an amazing position to take. I have not come across anyone with a baseball bat at these new schools, new health facilities or new housing facilities. The opposition might want to watch for them if it continues to oppose packages that are going to support schools, special schools and people on low incomes.

I commend the Premier for having the courage to be as transparent as this. He did not have to introduce a statement of intentions, but he had the guts to hang his hat on coming out at the start of the year and saying this is what he intends to do.

Ms BROAD (Northern Victoria) — I rise to speak on Labor's annual statement of government intentions for 2009, delivered by Premier John Brumby. This is Labor's second statement of government intentions to the Parliament and to the people of Victoria, and I would like to commence by making some comments about Labor's first statement of government intentions. When the first statement was introduced to the Parliament by the Premier last year there was a great deal of scepticism, to put it mildly, from the opposition parties — the Liberal Party and The Nationals — about this innovation in terms of the government's approach to engaging with the wider Victorian community in seeking its input to the government's legislative program. There was also scepticism about the government's intentions in terms of delivery of that program and its accountability to the Parliament for the intentions set out in the annual statement.

It is revealing indeed to have a look at what has happened since the first statement was made to the Parliament by the Premier. In the second annual statement of government intentions the government has reported to the Parliament on progress, and that progress includes a report that in 2008 the Legislative Assembly debated and passed 85 bills in 49 Assembly sitting days that included a sitting day in Gippsland, and the Legislative Council also sat in Gippsland. I might add in passing that regional sittings of the Parliament are initiatives of Labor committed to by the former Premier, Steve Bracks, earlier in the term of the government.

As well as the three bills on which there were conscience votes, the Parliament delivered on approximately 80 per cent of the priorities identified in the 2008 statement, with 44 out of 57 bills being introduced or released as exposure drafts. In terms of what the Premier outlined to the Parliament in his first statement of government intentions, the delivery, the reporting to Parliament and the engagement with the wider Victorian community in relation to opportunities afforded to Victorians — be it through regional sittings of the Parliament, exposure drafts of bills, community cabinet meetings, opportunities to make submissions and representations to MPs of all political parties right through to legislation being considered by the Parliament — has been a huge advance in Victoria's democracy.

Any fair-minded person would say that the scepticism expressed by the Liberals and The Nationals when the first statement was delivered has been shown to be very misplaced. This second statement of government intentions is a further development of Labor's approach to democracy, our accountability and opportunities that are afforded to all members of the community to have their say in the delivery of the government's priorities, be it in legislation that is brought before the Parliament in relation to the delivery of government programs or the development of new policy.

I turn now to Labor's second statement of government intentions, delivered at the start of this parliamentary sitting by the Premier. This statement includes not only 30 significant pieces of new legislation but commitments from the government to deliver on a number of very significant policy statements. The scope of this annual statement of government intentions has been widened to encompass even more of the government's priorities to make it even more accessible not only to Parliament but to the wider community and to afford further opportunities to participate and to hold the government accountable for its program. The government is more than happy to be held accountable for that.

I turn to the priorities outlined in the second statement of government intentions. Four strategic priorities have been set out: jobs — a resilient economy for long-term growth; families — people who are educated, healthy and involved; communities — places that are planned, connected and secure; and the environment, including climate change and water. These are ongoing priorities for the government. With the advent of the dire international financial circumstances which have now been visited on Australia and on families and communities, including in Victoria, jobs have become an overarching priority for the government and for the federal Labor government as well. Today the premiers are meeting at COAG (Council of Australian Governments) to consider further ways of strengthening the government's priorities in programs and delivery as a matter of urgency for the purpose of generating jobs. We would all be enormously encouraged if we were to

hear some words from members in the Liberal Party and The Nationals in support of that priority and in support of the urgent approval of funds through the federal Parliament for furthering that agenda.

In relation to our priorities for the Victorian government around families, the community and environment, all of those priorities are very much dependent on getting delivery on jobs. These are priorities that can all sit very comfortably alongside one another, but unless we ensure that the economy keeps moving and people have jobs, then communities and families are going to suffer and our environmental priorities are also going to suffer.

I turn to the legislative highlights outlined in the government's statement of its intentions. Priorities have been set out for around 30 new pieces of legislation, and that is without taking into account the 23 bills that are on the notice paper already for consideration by Parliament this year. Going through those, we see priorities in relation to major projects, including facilitating the delivery of major infrastructure and speeding up developmental approvals. Just this week we have seen action on that by the Premier and the planning minister in terms of demonstrating delivery on the commencement of a social housing project and pointing to the need to legislate in this area to facilitate the delivery of further major infrastructure and development approvals, particularly in this new environment that we are all saddled with as a result of the international financial circumstances. It is critical to keep major infrastructure development approval processes moving as efficiently as possible and to provide job opportunities through these projects and developments. Where these developments have social policy benefits as well, there is further reason for providing for facilitation for those projects through development approval processes.

As well as that, there will be legislation to assist the implementation of the Victorian transport plan — a major transport plan that the Parliament has had the opportunity to spend quite a lot of time debating this week, which is going to make a huge difference not only to people in Melbourne but also to people right across Victoria. In my electorate of Northern Victoria Region there are enormous benefits that will flow from it, whether we are talking about regional freight, rail lines, passenger rail services in north-eastern Victoria, roads or bus services. This is a major investment that is being made by federal and state Labor governments. Legislation to facilitate the implementation of that plan is a very important legislative priority in the statement of government intentions.

The legislative program includes further improvements to the functioning and accessibility of Victoria's justice system, as outlined by the Attorney-General in the 2008 justice statement. This will include the development of new legislation to replace the Equal Opportunity Act 1995, which, although a very important piece of legislation, has been in place now for a considerable period of time and is certainly in need of updating. There will also be reform of gaming, racing and liquor legislation to implement government policy and ensure that the gaming, racing and liquor industries remain fair and competitive.

Legislation will also deliver on a very significant 2006 election commitment in relation to the creation of new national parks. There has been a very lengthy process of engaging with communities, particularly in my electorate of Northern Victoria, around the matter of red gum forests and national parks. Following that extensive process and in order to deliver on those election commitments, decisions have finally been made by the government on the recommendations of the bodies that were charged with responsibility for those investigations. Legislation will be put before the Parliament that will propose the creation of four new red gum national parks — in Barmah, Gunbower, the lower Goulburn River and Warby-Ovens — as well as the completion of the reserve system to include old-growth forests and icon sites in East Gippsland.

In addition there will be legislation in the urban planning and workers compensation areas, and there will be further legislation to ensure that our regulatory systems continue to be updated, where possible in line with agreements entered into through the COAG and harmonised with other jurisdictions for the benefit of both consumers and business.

Finally, the government will continue its program of repealing unused and redundant acts — those bills that come before the Parliament which are particularly challenging to speak to.

There will also be — and this is referred to in the annual statement of government intentions — ongoing implementation of national reform through COAG, so 2009 will be another year of opportunities to use the historic agreements reached at COAG meetings, including those reached at the end of 2008, to deliver better services in health, education, disability and housing. Over five years these agreements provide an additional $15.2 billion nationally, with Victoria receiving an additional $2.8 billion in grant funding.

I might say that these funding commitments through COAG predate the commitments made by the Brumby

Labor government as well as the Rudd Labor government to specifically respond to the circumstances we now face as a result of the international financial circumstances. So we are now seeing, in addition to the amounts referred to in the annual statement of government intentions, substantial additional funding commitments in education, in housing and in health and disability.

In addition to those highlights and priorities I also underline the government's ongoing commitment to consultation. This was a very important aspect which was highlighted in the government's first statement of government intentions. As well as the statement being an opportunity for the government to set out its priorities and plans and the areas in which it is developing policy, this is an opportunity to engage all Victorians in the process. That commitment to consult around the delivery of these priorities and plans and areas of policy to be developed is an ongoing commitment. In each area that is outlined throughout the document there is information available to members of Parliament and all Victorians on how they might seek to get involved in matters in which they have a particular interest. I want to underline that commitment and encourage families, communities and businesses to take full advantage of these opportunities.

I turn to some of the areas outlined in the statement which are of particular significance for my electorate of Northern Victoria Region. I want to turn particularly to section 18, headed 'Victoria's plan for water and agriculture'. In this section the statement outlines the government's plan to progress major infrastructure projects and programs identified in *Our Water Our Future — The Next Stage*. Those projects include the completion of works to reconnect Tarago Reservoir to deliver an additional 15 billion litres of water a year into the Melbourne water supply system; construction of the Sugarloaf pipeline, on track for completion by mid-2010, to deliver 75 billion litres of water to Melbourne in 2010–11; the northern Victoria irrigation renewal project, which will see hundreds of millions of dollars invested in regional communities as the water savings works program is stepped up; and design and planning for the 150 billion litre desalination plant, with construction due to begin by late 2009.

There are a great many aspects of the government's priorities, plans and areas of policy development outlined in the statement which I could continue on about, but I note that some of my colleagues who also want to speak on the statement are anxiously awaiting their opportunity, so I will wrap up my remarks. I place on the record my congratulations to the Premier, John Brumby, for his second statement of government intentions, to all the ministers who have contributed to it and to all the public servants who I am sure have worked long and hard over it. Anyone who has any engagement at all with government processes and who understands what is involved in developing and reaching agreement for policy and legislation initiatives through cabinet processes understands that setting out a whole program like this a year ahead involves an enormous amount of work, and not only does it provide opportunities for all Victorians to participate in that work but it deserves a lot of commendation for the effort that has gone into it.

Mr ELASMAR (Northern Metropolitan) — I also rise to speak about the Premier's statement of intentions made to both houses of Parliament on 3 February. I start by congratulating the Premier, John Brumby, and the Labor government for producing a comprehensive progress report that seeks to outline a progressive and practical plan to ensure that the economy of Victoria does not nosedive into recession. The plan clearly provides the Victorian public with Labor's continued vision for the future, a vision that seeks to build upon the last state budget's initiatives and drive the Victorian economy upwards for the benefit of business, consumers and all Victorians.

Outcomes are what count. Vision is a wonderful thing, but without the infrastructure and the mechanisms for implementation that is all it would be — just a plan. However, Premier Brumby and his government have laid out a framework and timetable for this plan to become a reality. Simply put, we are not sitting on our hands and talking hot air. We have the means and the commitment to continue to make Victoria the best place to live in Australia.

Listening to the Prime Minister, Kevin Rudd, outline his strategy for beating or at least minimising the effects of the global downturn in the world economy and its potential effects on Australia's economy, I was impressed with his generous allocation for school upgrades across Australia. I would like to take this opportunity to talk about the Premier's continuing education reform agenda. As I have said before, as a member of the parliamentary Education and Training Committee I believe in change and I believe in striving for a better education for all Victorian children. It is extremely important to provide a safe and pleasant environment for kids to learn in, whether they are in the government system or in private schools. Reforming, rewarding and improving skills for a professional teaching service will undoubtedly give our kids a better start in life.

I am not going to outline everything in the Premier's statement of intentions, but I fully support and commend the Premier on it. I look forward to the positive results that this strategic direction will provide to all Victorians.

Mr SCHEFFER (Eastern Victoria) — Firstly, I would like to extend my congratulations to the new member for Southern Metropolitan Region, Jennifer Huppert.

Mrs Peulich — Were you here listening?

Mr SCHEFFER — Indeed I was here listening this morning. She presented her inaugural speech earlier today. As such, she was the first speaker to address the annual statement of government intentions. I congratulate Ms Huppert on that presentation.

I also congratulate the Premier and the ministers of the Brumby government for the presentation of the second annual statement of government intentions delivered in the Assembly on Tuesday. The statement comes, to say the least, at an extraordinary time in our history. It takes place on an extraordinary day in our history, when the commonwealth Parliament debated last night — and is still formally debating as it has not yet gone to the Senate — the federal government's $42 billion stimulus package. The Premier and the Treasurer are in Canberra putting forward Victoria's views on the details of that package. Therefore, like many other members of this chamber I find it deeply disturbing that the federal Liberal opposition is threatening the nation's capacity to work through what is a huge challenge.

Global economic uncertainty has not been a total surprise to people who have been watching the international scene. The Premier drew attention to the ominous signs on the horizon in his budget speech last year when he mentioned the concerns that Victoria, Australia and the globe would be facing. In my contribution to the debate at that time I also mentioned the uncertainty and challenges that are presented by climate change and the complex impacts that these are having on almost every aspect of the human and natural environment. I mentioned the already evident instability of the global financial markets that could affect the real economy, the pressures of increasing inflation and the credit crunch, the world food crisis, the energy crisis and, more specifically, the rapidly escalating price of oil. The oil price has abated over the last year, but that might well be a temporary thing given the issues of peak oil.

I also mentioned in that contribution my concern that the global momentum that has been building to address climate change might be slowed by a weakened global economy. The next half-dozen years remain critical in this debate. The consequences of faltering on climate change could prove to be disastrous. I believe a particular challenge for the Victorian government right now in this context is to invest as massively as we responsibly can in infrastructure that will meet the challenges of climate change.

A number of members might have seen last night on *Lateline* an interview that Tony Jones conducted with Professor Robert Shiller, a US researcher and academic. Shiller was one of the first to have seen the global financial crisis emerge. His was one of the first voices that warned of the scale of its impact. In his *Lateline* appearance Shiller urged governments — and he specifically mentioned the United States, of course, being his own country, but also Australia — of the critical need to make massive investments now in infrastructure that would put both of the nations in a good position to maximise when eventually the present downturn passes.

There is a temptation — and Tony Jones last night succumbed to that temptation — of seeing almost an end-of-the-world scenario, and Shiller was very reassuring in that he said this may be serious and it may be devastating in a lot of parts of the world, but it is not the end of the world. It is a human problem, and human beings can work and plan and struggle their way through this. That is exactly what the federal government, the state government, the US government and governments all over Europe — and Asia, of course — are working towards very strongly. Twelve months later a lot of these things we discussed over the last year have come to pass and we are all now in a position of having to take collective responsibility, so the statement is a way in which we can improve our thinking about what we do as a government in Victoria.

This is the second statement of government intentions that has come out, and I think it is, firstly, a very important initiative of the government to enhance and improve democracy and public participation in government. These documents are the first that I have ever seen which set out a legislative program for the rest of the year. All members of this Parliament know that is important because they work with community organisations and community groups that are keenly involved in government policy and also understand that they themselves are subject to legislation. It is important for them to maximise their engagement and understand what is coming up so they can organise themselves around the issues the legislation is going to present them with. They can do preparatory research, and at the appropriate times they can then provide that

direct input to government through local members, through ministers and their officers or through government departments or whichever organisations and agencies advocate for and represent them. The document sets out very clearly where the government is at the moment and where the government intends to be and move through 2009.

Community organisations are often disadvantaged because they do not have access to this information and do not have sufficient lead time to organise themselves in the way that is necessary to make an impact. The statement flags up front the government's four strategic priorities, the first being jobs — and I suspect that over the next period ahead of us it is going to be jobs, jobs, jobs and then jobs, jobs, jobs again, because that is the important issue for Victorian families. The second priority then is families, meaning areas to do with education, health and engagement with the community. The third is communities, meaning livability issues, planning, connectedness and security of communities, and the fourth is environment, taking in the themes of climate change and water.

The major initiatives in the statement are integral to these four strategic priorities. The environmental agenda is linked to a jobs action plan; there is a blueprint for regional growth; housing is the biggest job creator in the country; and there is a future energy statement to transition Victoria to a low carbon future as part of our response to climate change. If you look through the list of the major initiatives, you will see that the four groupings listed there will have a bearing on the major infrastructure initiatives of the government over the next year that will have a bearing on jobs and livability, regional growth and housing — all those hard initiatives that the government needs to put in place in order to keep the economy moving.

These initiatives will be developed in conjunction with the commonwealth, and the additional budget will come through the $42 billion stimulus. The first few pages of the document set out the legislative highlights, the government's priorities, what has happened in broad terms over the last decade and a range of 10 or so major initiatives for 2009, and then it picks out two broad themes. One is the delivery of infrastructure that I have already alluded to, and the second is national reform — and as part of a federation, Victoria needs to link in closely to the Council of Australian Governments process — and finally there is a section on progress in 2008.

All the initiatives and all the areas are then listed in the following pages for easy reference. I want to start the last part of my contribution by looking at a couple of sections in a little bit more detail. One of the ones I selected fairly randomly is the section on page 53, 'Communities — planned, connected and secure'. This is a one-page section, and anybody reading it would see that it provides a background and sets out the themes of what this concept is about: to keep communities coherent, respectful and harmonious and to remove violence, binge drinking and inappropriate behaviour. The object is to remove those things from our community to create a more harmonious culture in which to live, and two broad thrusts are suggested. One thrust is the containment of problems, and that means including more resourcing for policing, tighter licensing laws and trialling innovative approaches to how the police might operate in some of the more difficult contexts they need to work in, but then there is the other aspect of that, which is the positive side — to encourage more young people to engage in volunteer programs, to join community organisations and to take an active role and responsibility in the community.

Having said that, the section then talks about how we would move towards building respect in a community by building a community where young people in particular, but everybody, feels that they belong. Finally, there is an area on promoting the theme of respect through schools, and the section then concludes with referring people who may be interested in following up this year to the *Blueprint for Education and Early Childhood Development* as one of the documents they could draw on.

I think this is a very important emerging theme in our community, and people will be aware that this was developed by the Blair government as well over the last few years. It builds on Victoria's very strong history around communities, building multifaith confidence and relationships amongst the different faith communities and also amongst the different cultural and ethnic communities of Victoria.

The second area that builds on from there is the Victorian action plan, which is also part of 'Communities — planned, connected and secure', and this has been much better articulated by the government. It is not a new idea; it has been worked on for a few years. It builds off Victoria's action plan and talks about some of the legislation and some of the programs the government has initiated in this area and then gives a few simple elements in relation to emerging legislation — the Liquor Control Reform Amendment (Enforcement) Bill, which will be before the house shortly, and the Liquor Control Reform Amendment (Licensing) Bill.

It draws people both to a broad, thematic, newly emerging area around respect and then looks at the Victorian action plan as a case in point. That is a useful model that is repeated through each one of the themes in the statement of government intentions.

Candy Broad drew attention to the complexity of putting a document like this together. There is a lot of work behind them, and anyone who has worked in government would understand, as Ms Broad said, that it is a huge amount of work, and in the delivery and development of it a government develops a coherence and shape of where it is going in the future. It is a good document, it is solid, and I commend it to the house.

Ms PULFORD (Western Victoria) — It is my pleasure to make some comments about the statement of government intentions for 2009 and to respond to the document *Delivering for Victoria* and to the Premier's comments in the other place on Tuesday of this week.

This is the second time that Victoria has had a statement of government intentions, one of a handful of measures announced by the Premier when he first became the Premier of the state. It was part of a package of measures to make government more accountable. In the first ever statement of government intentions 12 months ago Victorians were able to see clearly articulated their government's priorities for the coming year. It is a great feature of the statement that organisations and community groups throughout Victoria can know of legislation in their area of interest that is on the horizon and can participate more directly with government and in the development of that legislation.

Two thousand and eight was a year of considerable action. The government has been working hard to meet the significant challenges in securing our water future since inflows dramatically reduced in 2006. The government is working to assist Victorians to recycle water, to use less where possible and to expand the water grid throughout the state, in addition to identifying new sources of water through savings. That is progressing apace and it is certainly heartening to see that happening.

Where I live in Ballarat the daily reports in the local newspaper about the catchment levels state that they are going up, which is wonderful news because they were very low prior to the super-pipe connection. It was a great day when it was switched on at White Swan Reservoir.

The government has acted in all areas of government responsibility. Of particular interest to many Victorians in south-west Victoria, after a very long community-based campaign last year, is that the government announced an additional two rescue helicopter services to provide better and quicker access to high-quality care in Melbourne for people throughout regional Victoria. One will be based in Warrnambool and the adult retrieval service will be based in Essendon. This was certainly welcomed warmly by residents in south-west Victoria. I mark that as a highlight in my electorate for the year.

In Horsham shortly after the state budget I was pleased to join Minister Wynne when he announced an allocation of $1.9 million for housing and community engagement projects throughout Horsham, specifically around the Horsham North area. It is a wonderful project that I have been pleased to support. I know the member for Lowan in the other place, Mr Delahunty, has also had a long connection with it and is a big supporter of the project. It is great to see that investment starting to show dividends.

We had some difficult debates in this place in 2008. There were three historic conscience votes. During my first term as a member in this place there was a conscience vote very soon after, for those who were elected in 2006, but members elected in the previous term assure me that this is not a particularly common occurrence. We were able to remove some historic discriminations in the area of assisted reproductive technology and to remove abortion from the Crimes Act. We had a difficult debate also on a voluntary euthanasia bill, the passage of which was not successful, but the experience of all members in this place — there were three debates in the other place but we only debated two of the three bills — certainly tested everyone a great deal last year. Nevertheless some historic reforms were made in areas that had been thought too difficult for too long.

As I am sure members found throughout 2008 as the government legislative program proceeded and as issues were debated during sitting weeks, there was satisfaction to be had from working with community groups and individuals with concerns or difficulties where they needed the assistance of government or their local member. Non-government members also, I am sure, get a great deal of satisfaction, as I do, in assisting people with their problems.

In 2008 we started off with the statement of government intentions, and a great deal occurred throughout the rest of the year. Likewise 2009 will be a big year for members in this place. The annual statement of government intentions outlines four main areas of priority for the government over the coming

12 months. They will be demonstrated here and throughout the state as we go about our other work.

In his statement the Premier talked about the four themes of the program: new jobs; a fair go for families; greater livability in our cities, suburbs, towns and rural communities; and environmental sustainability. This is now greatly overshadowed by relatively recent events in the global financial system. We will all be tested much more this year as the economic downturn being predicted by the economists affects our constituents.

In health and education we will continue to deliver in 2009 on the commitments given in the Victorian transport plan a couple of months ago and to strengthen our communities, which will in some respects have their resilience tested. Victorians are very generous people, and our communities are strong. All members would, no doubt, join me in expressing the wish that people look out for their neighbours, friends and loved ones in these difficult times, take the extra step to be a little more compassionate and accessible, and be a little less frantic as people are affected by economic circumstances from far afield. When a person loses their job they suffer a massive social dislocation; that places an enormous disruption on their family. It is incumbent on all of us to help people stay in employment.

Our economy is strong. We are on a very sound footing to face up to the global financial crisis. We have massive state and federal government investments — Senate willing! — in infrastructure and job-creation programs, many of which have very limited time lines to create economic stimulus and provide job opportunities for people in industries affected by downturn.

The annual statement of government intentions points out that we will be debating legislation to facilitate major transport projects, and we will, no doubt, be able to have a robust debate about those projects at the time. The fast-tracking of projects for improvements to road and rail, school buildings and infrastructure in our health system will certainly provide employment. As we heard in question time, in some severely drought-affected communities, much to their great relief, employment has been created through pipeline projects.

One of the other themes of the statement is a fairer go for families. In Victoria we have many different types of families — young families and old families; they reflect the very diverse makeup of our community. Early childhood education is something we talk about a lot in this place; I am very pleased that through the work done with the commonwealth government, early childhood education has become a significant focus of our efforts.

I have enjoyed working with a group of very dedicated educators in Ballarat who are associated with Link Up, which is a program that assists young mothers — quite young mothers in some cases — in their education. Their objective is to assist those mothers in gaining an education to a point in time when their baby enters the education system some five or six years later. That is a good illustration of how we can assist people, through a flexible approach to education, to keep their options open throughout their lives and to continue their education despite their changed family circumstances. I look forward to continuing to work throughout the year with the Ballarat Learning Exchange and the people involved in the Link Up program.

In recent years we have seen a shift in education design. Recently my colleagues the members for Ballarat West, Karen Overington, and Ballarat East, Geoff Howard, both in the Assembly, the Premier, the Minister for Education and I visited the new school in Wendouree West. This school has an award-winning design, unlike the schools in which we would have all been educated. It is a truly spectacular school of the future.

The Rudd federal government's economic stimulus package, which was announced yesterday, will provide further school improvements with the building in every primary school of a new gymnasium, library or meeting room facilities, which will be wonderful. There are schools throughout Victoria that are enjoying the benefits of the Building Futures program. Schools from Timboon to Horsham, and which I have been involved with, were invited to participate in the planning stages of the Building Futures program last year. They can look forward to being part of the government's commitment to rebuild, renovate or modernise every school in the state.

One of the other themes of the statement is more livable communities. As part of our commitment to creating more livable communities we are connecting communities through community buses, continuing our commitment to community safety and doing a great deal of work in the area of appropriate development, streamlining planning to ensure ongoing economic activity and doing a great deal of work with our regional communities to assist in their planning.

The final theme of the statement is climate change and the green economy. As Victoria faces difficult economic times it is essential that we seize the opportunities that emerge out of the growing green jobs

market and that we are at the forefront of skills development in this area.

Finally I refer to the drought. It is still incredibly dry in many parts of our state. As we talk about enriching community experiences and providing good community facilities we must continue to assist our communities in properly maintaining and developing their sporting and recreational facilities, particularly in those drought-affected parts of the state. The repair of a football ground that cannot now be played on can provide massive relief to a community where the footy and netball clubs are the heartbeat of the community.

It is Thursday afternoon, and everybody wants to go home.

Honourable members interjecting.

Ms PULFORD — Thank you, members. I look forward to hearing other members' contributions on the statement of government intentions when we return in a couple of weeks.

Debate adjourned on motion of Mr VINEY (Eastern Victoria).

Debate adjourned until next day.

EQUAL OPPORTUNITY AMENDMENT (GOVERNANCE) BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Equal Opportunity Amendment (Governance) Bill 2008 ('bill').

In my opinion, the bill as introduced to the Legislative Council is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The governance bill will amend the Equal Opportunity Act 1995 ('EO act') to create a new governance structure for the Victorian Equal Opportunity and Human Rights Commission ('commission').

In summary, the bill will:

create a new full-time position of commissioner appointed by the Governor in Council for a renewable term of five years;

provide that the commissioner will have control of the day-to-day administration of the affairs of the commission in accordance with the policies, priorities and strategies determined by the board;

provide that the commissioner will chair a board with between five and seven members;

provide that board members will be appointed on a part-time basis by the Governor in Council on recommendation of the minister with a renewable term of five years;

give the board a clear strategic oversight function and the power to make strategic decisions and to set the organisation's strategic direction;

consistent with the board's new strategic functions, remove the board members' complaint-handling functions and powers completely, and allocate complaint-handling powers and functions to the commissioner who can then delegate to appropriately skilled staff; and

abolish the current chief conciliator/chief executive officer position.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

Right to privacy and freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds whether within or outside Victoria and in any medium. Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression under section 15 of the charter and the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons, or for the protection of national security, public order, public health or public morality.

Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

Section 192 of the EO act requires certain people (e.g. members of the commission, the chief conciliator, a member of staff of the commission and any other person acting under the commission's authority) to keep information secret where that information concerns the affairs of any person that has been obtained in the course of performing functions or duties or exercising powers under the EO act.

Section 192 protects the right to privacy of people making and responding to complaints of discrimination, vilification,

sexual harassment and victimisation, by preventing the release of information concerning the affairs of any person in the course of (or as a result of) performing functions or duties or exercising powers under the EO act. Information concerning the affairs of any person that has been obtained in the course of the commission's education and research and other functions is protected in the same way.

Clause 5 of the governance bill inserts a new section 177 into the EO act. New section 177 re-enacts section 192 with the consequential amendments required to give effect to the creation of the commissioner position and abolition of the chief conciliator and chief executive officer position by this bill.

New section 177 does not prevent the parties themselves from disclosing information. The clause prevents the recording, disclosure or communication of personal information by the commissioner, board members and staff of the commission (and other specified people) unless it is necessary to do so for the purpose of, or in connection with, the performance of a function or duty or the exercise of a power under the EO act.

New section 177 engages the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds (section 15(2) charter) by making it an offence for specified people to make a record of, disclose or communicate certain information.

However, the new section will be a lawful restriction reasonably necessary to respect the rights and reputation of other persons, in accordance with section 15(3)(a) for the following reasons:

> The restriction will be lawful because it will be contained in the Equal Opportunity Act 1995 as amended.
>
> The restriction protects the right to privacy and reputation in section 13 of the charter by restricting the disclosure of personal affairs where it is unnecessary to disclose that information.
>
> The restriction is reasonably necessary because new section 177 provides that the information may be recorded, disclosed or communicated if it is necessary to do so for the purposes of or in connection with the performance of a function or duty or the exercise of a power under the act.

Conclusion

I consider that the bill is compatible with the charter because although the bill engages the right to freedom of expression, that right is subject to a lawful restriction.

Hon. Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act, be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian Equal Opportunity and Human Rights Commission (the commission) is the statutory body that administers the Equal Opportunity Act 1995 and has functions under the Racial and Religious Tolerance Act 2001 and the Charter of Human Rights and Responsibilities Act 2006.

The first iteration of the commission was created in 1977 by the Equal Opportunity Act 1977 which created the Equal Opportunity Board and the Office of the Equal Opportunity Commissioner. The Equal Opportunity (Amendment) Act 1993 made a number of structural and operational changes to the equal opportunity framework including replacing the Equal Opportunity Commissioner with a five-member Equal Opportunity Commission.

In June 2008, the former Public Advocate, Mr Julian Gardner, completed an independent review of many aspects of the Equal Opportunity Act 1995 and issued his report: *An Equality Act for a Fairer Victoria*. This report will inform a major overhaul of Victoria's equal opportunity law and the commission's role over the next five years.

This government has committed to acting on the *An Equality Act for a Fairer Victoria* report to strengthen Victoria's laws against discrimination and the capacity of the commission to take action against systemic discrimination. In particular, this government has announced that it is considering implementing a range of reforms recommended in the report, including transforming the commission from a complaints-handling body to one that acts on systemic discrimination, researches, educates and actively helps people to resolve discrimination disputes and to comply with the law; replacing the slow-moving paper-based complaints system with early and flexible alternative dispute resolution to be provided by the commission; giving victims of discrimination a new choice to go straight to the Victorian Civil and Administrative Tribunal (VCAT) supported by external legal advice and assistance; creating a duty not to discriminate even in the absence of a complaint; providing protection from discrimination for the homeless, volunteers and people with an irrelevant criminal record; and specifically requiring people to make reasonable adjustments for those with disabilities.

In February 2008, the government announced that it would develop legislation to amend the Equal Opportunity Act 1995 in a staged approach to the implementation of the government's response to the recommendations arising from the Equal Opportunity Act review.

The introduction of the Equal Opportunity Amendment (Governance) Bill 2008 gives effect to this commitment by

implementing those recommendations in the report that relate to the governance of the commission. This bill will create a more efficient and effective governance structure for the commission and provide clearer lines of responsibility and accountability.

Since 2006 the Charter of Human Rights and Responsibilities has provided the commission with a new mandate in relation to a broad range of human rights matters, but the governance of the commission has not been amended to reflect these additional responsibilities. The commission's current governance structure is ill-equipped to manage the functions of a commission with a broader focus on human rights and systemic discrimination as foreshadowed by the justice statement 2. This bill will increase the size of the board membership so that it has increased capacity to perform its functions under the charter and to manage a broader focus on human rights and systemic discrimination.

The act does not currently clearly state the roles and responsibilities of the part-time chairperson of the board of the commission and the full-time chief conciliator and chief executive officer. The act is ambiguous around whether commission members operate as a board of governance or an advisory board. This bill will clearly state the roles and responsibilities of members and the commissioner.

I would now like to provide an overview of the main features of the bill.

The commissioner

This bill will create a new full-time position of commissioner appointed by the Governor in Council for a renewable term of five years. This position will replace the current chief conciliator/chief executive officer position although the functions of the two positions will be different. The bill provides that the commissioner will have control of the day-to-day administration of the affairs of the commission in accordance with the policies, priorities and strategies determined by the board. The bill also provides that the commissioner will chair the board of the commission. The current chief conciliator/chief executive officer does not chair the board; the chair is one of the part-time members of the board.

A Governor in Council order will also be made to coincide with commencement of this bill so that the commissioner is a public service body head for the purposes of section 16 of the Public Administration Act 2004. This means that the commissioner may directly employ commission staff. The bill provides that commission staff will remain public sector employees under part 3 of the Public Administration Act 2004.

The board of the commission

The bill also reforms the board of the commission. The bill will increase the size of the board from five members to between five and seven members (including the commissioner who will chair the board). This increase in the board's size is warranted by the commission's recent increase in functions under the Charter of Human Rights and Responsibilities and the breadth of human rights and equal opportunity issues within its mandate.

Members of the board of the commission will continue to be appointed on a part-time basis by the Governor in Council on the recommendation of the minister with a renewable term of five years.

The bill gives the board the power to determine the commission's strategic direction and the general nature of activities to be undertaken by the commission in performing its functions. The board will also set policies, priorities and strategies for the commission in performing its functions.

Consistent with the board's new strategic functions, this bill removes the board members' complaint-handling functions and powers completely, and allocates complaint-handling powers and functions to the commissioner who can then delegate to appropriately skilled staff as required.

Improved transparency and accountability

The bill strengthens the independence of the commissioner and the board of the commission by including specific criteria for the removal from office of the commissioner and members of the board of the commission.

Rather than the Governor in Council being able to remove appointees from office 'at any time' as is currently the case, new criteria for removal from office will apply. For example, conviction for an indictable offence and insolvency will result in the commissioner or member automatically ceasing to hold office. The Governor in Council will have the discretion to remove the commissioner or a member of the board of the commission from office for unexplained absence from three consecutive meetings, misconduct, being incapable of carrying out the duties of office or personally committing a significant breach of an Australian equal opportunity or antidiscrimination law. These criteria are intended to support security of tenure while ensuring the flexibility for removal of the commissioner or a member of the board of the commission for prescribed reasons.

A Governor in Council order will also be made to coincide with commencement of this bill so that part 5 division 2 of the Public Administration Act 2004 (entitled 'Governance Principles') will apply to the commission. This will ensure that the standard governance principles such as directors' duties and accountability provisions that apply to other public entities will also apply to the commission and provide a sound governance and accountability framework for the commission.

The bill will commence on a date to be proclaimed, but no later than 1 October 2009.

Section 85 of the Constitution Act

Mr JENNINGS — I wish to make a statement under section 85(5) of the Constitution Act 1975 on the reasons for altering or varying that section by this bill.

Section 211 of the Equal Opportunity Act 1995 alters or varies section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of any action in relation to a complaint dismissed by the commission under sections 108, 110, 113, 117 or 123 of the Equal Opportunity Act 1995.

The effect of section 211 is to limit a complainant's right to pursue further legal action once the commission

has dismissed a complaint where the complainant has failed to request a referral to VCAT within 60 days of being advised by the commission of his or her rights of referral. The 60-day time limit provides a complainant with sufficient time to consider his or her options and to seek legal advice if necessary. It would create uncertainty and place an unfair burden on respondents if matters that have been dismissed by the commission could be relitigated.

The bill inserts new section 211(2) into the Equal Opportunity Act 1995 so that decisions of the commissioner pursuant to sections 108, 110, 113, 117 or 123 of the Equal Opportunity Act 1995 may not be brought before the Supreme Court. This is required because complaints will no longer be dismissed by the 'commission' under the Equal Opportunity Act 1995; all complaint handling functions will rest with the commissioner.

Section 211(c) of the Equal Opportunity Act 1995 alters or varies section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of any action in relation to a complaint where a person has chosen another avenue under section 103 of the Public Sector Management Act 1992 in relation to the same subject matter. It is appropriate that this bill repeals section 211(c) because the reference to the Public Sector Management Act 1992 and section 103 of that act is obsolete; the Public Sector Management Act 1992 has been repealed.

Incorporated speech continues:

This government has committed to strengthening Victoria's equal opportunity framework and addressing systemic barriers to equality. This commitment has been made in several Victorian government policies in recent years, including *Growing Victoria Together 2*, *A Fairer Victoria* and both the 2004 and 2008 justice statements.

This bill creates a governance structure for the commission that reflects the breadth of the commission's responsibilities under the Equal Opportunity Act 1995, the Charter of Human Rights and Responsibilities Act 2006 and the Racial and Religious Tolerance Act 2001. The bill also resolves some of the operational challenges posed by the commission's current structure and means that the commission will be well placed to implement the second stage of reforms arising from the *An Equality Act for a Fairer Victoria* report over the coming years.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Ms Lovell.

Debate adjourned until Thursday, 12 February.

CRIMINAL PROCEDURE BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

I make this statement of compatibility with respect to the Criminal Procedure Bill 2008 (the bill) in accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter).

In my opinion, the bill as introduced to the Legislative Council is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The purpose of the bill is to overhaul existing criminal procedure laws — including summary proceedings, committals, pretrial matters, trials and appeals — to ensure that criminal procedure is modern, accessible, coherent and easy to follow.

The bill clarifies Victoria's criminal procedure laws by rewriting current statutory provisions in a clear and concise manner and by consolidating and rationalising the criminal procedure laws from various acts and regulations into one piece of legislation. The order of the provisions follows, as closely as possible, the order of criminal proceedings. The bill also abolishes a number of outdated and redundant provisions. The bill is designed to maintain and further enhance an environment in which criminal justice is administered fairly and efficiently.

The bill makes a number of policy changes to Victoria's criminal procedure legislation. The key policy changes relevant to this statement are referred to where necessary.

The bill is not a code. It is designed to operate in tandem with good practices and processes that have been developed by our courts over more than 100 years, and with other central pieces of relevant legislation, such as the Evidence Act 2008.

Human rights issues

The charter includes a number of rights which are directly relevant to criminal procedure. Those rights were not created by the charter afresh. They reflect and reinforce rights in the criminal process that have been developed by the courts and Parliament over a long period of time and have shaped the Victorian system of criminal procedure. These familiar and longstanding rights include, for example, the right to a fair hearing and the right to have convictions and sentences reviewed by a higher court. This bill does not seek to alter the

fundamental shape of Victoria's criminal justice system, nor the procedural rights which underpin it.

The bill also does not operate in a vacuum, but in a system where judicial officers exercise discretions and make orders in accordance with long-developed principles of fairness and natural justice, and where the accused's rights are often protected by the active participation of defence practitioners. It also operates symbiotically with common-law powers and processes. All of these contributors need to be considered when analysing this bill from a charter perspective.

At one level, every clause in this bill can be said to have charter implications because each is a small part of a complex process ultimately designed to provide a fair hearing of criminal allegations to those accused of crimes, to victims of alleged crimes and to the community.

This statement does not include analysis of every clause in the bill, but instead identifies and reviews those clauses, groups of clauses and processes that genuinely raise substantive charter issues. As will be obvious, many of these issues involve balancing legitimate competing interests, including different rights in the charter.

That is not to say that existing procedures have been accepted uncritically as being charter compatible. The development of this bill has required every process, whether re-enacted or created, to be analysed for compatibility with human rights and, throughout this statement, I will identify areas where changes have been made in order to improve compatibility.

Human rights protected by the charter that are relevant to the bill

The principal rights under the charter relevant to the bill are:

section 24: fair hearing; and
section 25: rights in criminal proceedings.

Additional relevant rights are:

section 8: recognition and equality before the law;
section 12: freedom of movement;
section 13: privacy and reputation;
section 15: freedom of expression;
section 17: protection of families and children;
section 20: property rights;
section 21: right to liberty and security of person;
section 23: children in the criminal process;
section 26: right not to be tried or punished more than once; and
section 27: retrospective criminal laws.

For each right, clauses and processes in the bill that will have an impact on that right are identified and analysed to determine whether they limit or restrict the right and, if so, whether they are compatible with the right. Where a clause or process involves considering more than one right I have made that clear.

Section 8: recognition and equality before the law

Section 8(3) of the charter provides that '[e]very person is equal before the law and is entitled to the equal protection of the law without discrimination …'. 'Discrimination' refers to different treatment based on one or more of the attributes set out in section 6 of the Equal Opportunity Act 1995 (EOA), which include age, impairment and physical features. A number of the bill's provisions raise the right to recognition and equality before the law as, on their face, they provide for differential treatment between persons or groups of persons based on the EOA attributes of age and impairment.

Human rights law recognises that formal equality can lead to unequal outcomes and that to achieve substantive equality, differences in treatment may be necessary.

The bill provides special rules for the giving of evidence and the cross-examination of complainants in committal proceedings for sexual offences if the complainant is a child or cognitively impaired. Clause 123 provides that a child or cognitively impaired complainant cannot be cross-examined at a committal hearing. The bill also provides for shorter time limits for holding committal hearings and filing indictments (clauses 99 and 163) and there are time limits for holding trials in relation to sexual offences generally which will also include such complainants (clause 212).

On their face, these provisions discriminate in that they give protections to complainants who are children or who are cognitively impaired which are not given to complainants who do not have those attributes.

Consideration of reasonable limitations — section 7(2)

However, the above limits on the right to equal protection of the law are clearly reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

Freedom from discrimination and the right of all people to be treated equally by the law regardless of age, impairment or physical features.

(b) the importance of the purpose of the limitation

It is important that all relevant evidence is available to the court. Special protections are necessary to ensure that children and other vulnerable witnesses are able to give evidence in a way that is appropriate to their particular disadvantage and minimises trauma and delay. Criminal proceedings relating to a charge for a sexual offence can be particularly traumatic. Clauses 8(4), 17, 23 and 24(3) recognise the importance of providing special protections to children and other vulnerable persons.

(c) the nature and extent of the limitation

The limitations are relatively minor in that they provide extra protections for a vulnerable category of witness, rather than removing protections for others.

(d) the relationship between the limitation and its purpose

The limitations are rationally and proportionately connected to the purpose of protecting and assisting witnesses of reduced capacity to ensure that relevant evidence is available to the court.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose. The provisions incorporate appropriate safeguards to ensure that the limitations are no more restrictive than necessary.

(f) other relevant factors

These limitations are also relevant to rights that the accused enjoys including the right to examine witnesses in section 25(1)(g) and the right to adequate time and facilities to prepare a defence in section 25(1). As I discuss later in relation to those specific rights, I consider that they are sufficiently protected in the bill because the prohibition on cross-examination only applies at committal (not at, before or during trial) and because the court has a discretion to extend the time limits for trial to ensure that an accused has adequate time and facilities to prepare (clause 247).

(g) conclusion

The extent of the limitation is proportionate to the desirability of protecting vulnerable witnesses and ensuring that relevant evidence is available in criminal proceedings while still maintaining the right to a fair hearing for the accused.

Section 12: freedom of movement
Section 21: right to liberty and security of person

I have chosen to deal with these rights together as they raise issues which substantially overlap. Provisions that compel the accused to attend court to answer to a charge or a witness to give evidence in criminal proceedings raise both of these charter rights.

The right to freedom of movement in section 12 of the charter is a basic human right. The right is not dependent upon any particular purpose or reason for wanting to move or stay in a particular place and encompasses a right not to be forced to move to, or from, a particular location. It includes freedom from physical barriers and procedural impediments such as prior notification or authorisation. However, it is also a right limited by necessity in many common situations.

Section 21 articulates a range of rights most of which relate to the rights of persons detained or arrested. The bill is not relevant to most of these rights which are addressed through other legislation and processes, most notably the Bail Act 1977 and the Crimes Act 1958. However, section 21(3) affirms the important right not to be deprived of liberty except on grounds, and in accordance with procedures, established by law. In the context of the bill, the right not to be deprived of liberty raises similar issues to the freedom of movement protections in section 12. The difference between the rights is that section 21(3) allows for the deprivation of liberty in accordance with procedures established by law, whereas limits on freedom of movement must be justifiable limitations under section 7(2).

Different considerations apply to provisions which impact on those accused of criminal offences and those who become involved in the criminal justice system in other ways, primarily as witnesses.

The accused

An accused person's loss of liberty is primarily determined under the Bail Act 1977 rather than under this bill. However, the bill includes provisions which, both in conjunction with the Bail Act 1977 and independently of it, can deprive an accused of liberty and impact on their freedom of movement.

Some clauses in the bill facilitate decisions being made under the Bail Act 1977 pending, or during the course of, proceedings (e.g. clauses 265, 310, 323, 359 and 362). Any resulting loss of liberty requires an independent assessment to be made under the Bail Act 1977.

The bill also contains provisions that require an accused to attend at court, regardless of whether the accused is on bail. The bill clarifies existing law as to when an accused is required to attend court. The word 'attend' is used when an accused must be physically present, whereas 'appear' is used when a person is entitled to send a representative (clause 3). The bill strikes a careful balance to ensure that interference with freedom of movement is limited unless genuinely necessary. It provides general rules for each type of proceeding (summary, committal, trial and appeal) and broad powers to require or excuse either attendance or appearance (clauses 329 and 330).

The starting point in summary proceedings is that an accused can appear and need not attend (clause 329). This is subject to the general power to excuse and a specific requirement that the accused attend at a contest mention (clause 55(4)). Contest mentions are an important case management event and are best progressed with an accused being physically present at court.

For committal and trial proceedings, an accused is required to attend all hearings (clauses 100(2) and 246). This reflects the more serious nature of the charges, but is still subject to a general power to excuse. In appeals, the general requirement to appear applies, subject to the general power to excuse.

A number of clauses give the court power to issue a warrant to arrest an accused (clauses 81, 80, 87, 268(2) and 330(4)). Each of the warrant powers is discretionary and circumscribed and exists for a good reason, including:

> a proved failure of the accused to attend when required (e.g. clause 330(4));
>
> to ensure that an accused is aware of the charges that he or she faces (e.g. clause 80(1)(b)); and
>
> to secure the accused's presence when the case cannot be progressed in their absence (e.g. clause 87(3)).

The above clauses do not limit the right to liberty as the interference in each case will be on grounds and in accordance with procedures established by law. They do prima facie restrict freedom of movement but reflect a careful balancing of the rights and interests of the accused, witnesses, victims and the community and are justifiable limitations on the right on the basis of the analysis below.

Witnesses and other persons

Several clauses impact on the right of persons involved in, or who wish to attend, criminal proceedings to move to and from or stay at the location of the proceedings. Clauses 11 and 169, for example, provide for the place of hearing and clauses 31 and 192 provide for the change of venue. The bill also provides for the exclusion of the public to maintain the privacy of certain information, for example, the complainant's evidence during committal proceedings in a sexual offence case (clause 133(3)).

Witnesses may also be compelled to attend for the purpose of being examined or giving evidence in proceedings under clauses 104, 129, 150, 151, 198, 318 and 336. Clause 134 provides for the issue of a summons or a warrant to arrest for a witness to give evidence at a committal hearing. The Court

of Appeal's general power to issue any warrant necessary for enforcing the orders of the court under clause 324 also applies to witnesses. Although these clauses restrict the right to freedom of movement, they are reasonable limits necessary to facilitate criminal proceedings on the basis of the analysis below.

Consideration of reasonable limitations — section 7(2)

The above limits on the right to freedom of movement (both for an accused and for witnesses) are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

The right to move freely within Victoria encompasses a right not to be forced to move to, or from, a particular location and includes freedom from physical barriers and procedural impediments.

(b) the importance of the purpose of the limitation

The limitations are important because they enable the court to secure the presence of accused persons and witnesses who may have relevant evidence and/or information in relation to criminal offences. The ability to secure the presence of the accused and relevant witnesses is essential to the effective administration of the criminal justice system and the right to a fair hearing, which is a key charter right.

(c) the nature and extent of the limitation

The bill limits freedom of movement to the extent that: persons may be compelled to be physically present at court or another location for a limited time to be tried for a criminal offence or to give evidence; an accused may be detained or imprisoned pending proceedings; and persons may be excluded from the court when a complainant in committal proceedings for a sexual offence gives evidence.

(d) the relationship between the limitation and its purpose

The limitations are rationally and proportionately connected to the purpose of ensuring the effective administration of the justice system and the right to a fair hearing.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) other relevant factors

The court's powers to issue warrants or take other steps to require attendance are discretionary. Importantly, the court does not issue a warrant to arrest in the first instance, rather, less restrictive measures are utilised unless a warrant to arrest is necessary to secure the person's presence at court. There are also relevant court practices that ameliorate any interference with freedom of movement, for example, the practice of allowing witnesses to leave the court temporarily if their evidence is not required immediately, and to release witnesses once they have given evidence.

(g) conclusion

These are reasonable limitations of the right to freedom of movement as the justice system would not be able to function if the court did not have the power to compel persons to attend and, where necessary, to be brought before the court to be tried or, in the case of witnesses, to give evidence.

Section 13: privacy and reputation

Section 13 requires that a public authority must not unlawfully or arbitrarily interfere with a person's privacy, family, home or correspondence. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not limit the right if the interference is neither arbitrary nor unlawful. Arbitrariness will not arise if the restrictions on privacy accord with the objectives of the charter and are reasonable given the circumstances. An interference will not be unlawful if the law, which authorises the interference, is precise, circumscribed and determined on a case-by-case basis.

Disclosure of private information by witnesses in court is an inevitable part of the criminal process. The privacy of witnesses is balanced against the need to obtain relevant evidence and the public interest in court processes being open to the public and able to be reported upon (which is an important component of freedom of expression protected in section 15 of the charter). However, the bill recognises that certain types of information should be kept private and provides for the court to be closed to the public in committal hearings for sexual offences (clause 133(3)).

This protection of privacy rights is not a consequential breach of freedom of expression. Section 15(3) authorises limitations on freedom of expression which are necessary to respect the rights and reputations of other persons. Section 24(2) (including the right to a public hearing) also confirms that laws which exclude people (including media organisations) from hearings are not a breach of the right to a public hearing. A more general power to close courts to the public is given to judges in other legislation (section 18 of the Supreme Court Act 1986, section 80 of the County Court Act 1958 and section 126 of the Magistrates' Court Act 1989).

The following specific provisions of the bill engage the right to privacy under section 13(a) of the charter because they provide for the disclosure of personal information of witnesses by the prosecution to the defence. However, as discussed below, the bill introduces new procedures that enhance the privacy rights of witnesses.

Disclosure of witness details

Clauses 48, 114 and 186 allow the prosecution to delete personal contact details of witnesses. Each creates an identical regime in summary, committal and trial proceedings. The court may require disclosure of those personal details. The current equivalent provisions (clause 8, schedule 5, Magistrates' Court Act 1989) do not include any reference to privacy interests when the court decides whether to require disclosure. The bill remedies this and privacy is now a mandatory consideration in relation to the disclosure of personal witness details both by the informant and the court.

Clauses 43, 119 and 187 provide mechanisms for the defence to request and the prosecution to provide details of previous

convictions of witnesses. Such convictions may well be relevant to the credibility of a witness and therefore important to an accused's defence. The bill ensures that details must only be disclosed if the prior conviction is relevant and the court has the power to make orders about disclosure of convictions in individual cases.

More generally, clauses 45 and 122 permit the prosecution to refuse disclosure of any information to the accused where it would, or is likely to, identify a confidential source of information, or endanger the lives or physical safety of witnesses or persons involved in law enforcement.

These clauses engage but do not limit witnesses' privacy rights. The interference is not unlawful as it is provided for in law, will occur in circumscribed and precise circumstances, subject to the court's discretion or oversight.

Section 15: freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression which includes the right to seek, receive and impart information and ideas orally, in writing, in print et cetera. The right encompasses a freedom not to express. Section 15(3) qualifies this right. It provides that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

'Public order' is the sum of rules that ensure the peaceful and effective functioning of society. Effective criminal procedure laws are necessary to ensure the proper administration of justice, to protect the parties to proceedings and to ensure that they have a reasonable opportunity to present their case to the court. This is a key element of public order.

The purpose of the bill is to regulate the initiation and conduct of criminal proceedings, which inevitably requires interference with the format, time, place and manner of expression of persons involved in the process. Laws regarding the commencement and notification of proceedings; the form, content, filing and serving of documents; pretrial disclosure; and the conduct and determination of hearings and appeals are necessary for the operation of criminal proceedings and for the protection of other human rights.

Many clauses require the prior approval of the court (by leave, review or notice) before expression. For example, notice is required prior to the presentation of expert or alibi evidence (clauses 50, 51, 189 and 190) and to address the court or call evidence not previously disclosed (clauses 65, 73, 233 and 236).

Some clauses compel persons to express information for evidential purposes, for example, clauses which provide for the issue of subpoenas and witness summonses (clause 336); disclosure (clauses 35–51, 107–117, 185–190, 317 and 318); and for the compulsory examination of witnesses (clauses 104–106, 152 and 198). Other clauses in the bill compel expression for procedural purposes such as: to notify an accused of the commencement of proceedings (clause 13); to inform the juries commissioner as to the need for a jury (clause 248); to inform the court of counsel's intention to appear for an accused (clause 249); and to prove service (clause 347).

These clauses are plainly necessary for the proper administration of the criminal justice system — a key element of public order — hence, are lawful restrictions under section 15(3).

When the Criminal Procedure Legislation Amendment Bill 2007 was before Parliament, the Scrutiny of Acts and Regulations Committee raised the issue of whether not asking an accused if they wish to reserve their plea in a committal proceeding engages the freedom of expression. The committee noted that freedom of expression includes the freedom not to speak and that removal of the ability to reserve a plea may limit that right by requiring speech in the form of a plea of guilty or not guilty.

The bill raises the same issues in that it requires the court to ask the accused whether the accused wishes to plead guilty or not guilty at the end of a committal proceeding (clause 144). In my opinion, the process does not engage freedom of expression rights. Previously, a magistrate asked an accused whether they wished to plead guilty, not guilty, or reserve their plea. Now, the magistrate does not indicate that the accused may reserve their plea but continues to ask whether the accused pleads guilty or not guilty to the charge.

In response to the question from the magistrate, an accused may choose to answer or not answer. There is no mechanism to compel an answer. A non-answer will be treated as a plea of not guilty. Accordingly, to the extent that it can be said that the charter right to freedom of expression is engaged by this process, it is not limited.

Section 20: property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Deprivation of property will be 'in accordance with law' where it occurs under powers conferred by legislation pursuant to a law, which is formulated precisely and not arbitrarily, or under a power to be exercised by a court on a discretionary basis with associated procedural protections.

Clause 336 allows a party to apply for a summons or subpoena. By this method, a person can be compelled to come before a court and produce items of property. However, the courts have developed protections which allow a person to object to providing any item and ensure that the person is not deprived permanently of an item under this process, but only for the time that the property is needed in the criminal proceeding. A similar power is given to the Court of Appeal under clause 317 for limited purposes and only where 'it is in the interests of justice'. These restrictions are prescribed by law, are not arbitrary and incorporate procedural protections. They therefore do not limit section 20.

There are also a number of clauses that promote this right by ensuring that property taken from a person is both protected (clause 312 which protects property from being destroyed during an appeal period) and available to be returned (clauses 34 and 157 which enable the return of seized property on request).

Section 24: fair hearing

Section 24 of the charter guarantees the right to a fair and public hearing. As I noted at the beginning of this statement, almost every provision of the bill engages the right at some level. For the reasons earlier discussed, I have focused on

those clauses and processes in the bill which genuinely raise substantive charter issues.

What amounts to a 'fair hearing' takes account of all relevant interests including those of the accused, the victim, witnesses and society. For example, it may be in the interests of an accused to know the addresses, telephone numbers and particulars of previous convictions of witnesses. However, clauses 48 and 114 (which allow such information to be withheld from the accused for privacy and safety reasons) do not breach the right to a fair hearing because they reflect an overall balance of competing interests.

Section 25 of the charter sets out specific minimum rights in criminal proceedings and gives much of the content to the section 24 right to a fair hearing. Most 'fair hearing' issues fit within a specific right in section 25 and I have chosen to analyse them in that way in this statement, while bearing in mind the overall right to a fair hearing. However, observance of the requirements of section 25 may not always be sufficient to ensure the fairness of a hearing under section 24. There are two issues which I have chosen to analyse as 'fair hearing' issues on that basis.

Defence disclosure

A number of clauses require the defence to give information to the court or the prosecution before a summary hearing, committal hearing or trial. These requirements already exist (in the Magistrates' Court Act 1989 and the Crimes (Criminal Trials) Act 1999) and the bill does not create any significant new obligations or powers. However, provisions which require the accused to give information before hearing need to be considered to ensure that they are not incompatible with either the right against self-incrimination or the right to be presumed innocent.

The defence disclosure provisions fall into two categories. First, provisions requiring an accused to give the prosecution notice of evidence to be called at trial (alibi evidence in clauses 51 and 190, and expert evidence in clauses 50 and 189). Secondly, provisions which require or request the accused to give information to the court for case management purposes (clauses 55, 183 and 200).

I do not consider that any of these provisions limit the right against self-incrimination because they do not require an accused person to give evidence or to confess guilt. Similarly, these provisions do not limit the right to be presumed innocent because they do not involve any reversal of the ordinary burden of proof on the prosecution.

Having concluded that these specific rights are not limited, I have considered whether defence disclosure provisions might limit the more general right to a fair hearing under section 24. I am aware that in *Hamilton v. Oades* (1989) 166 CLR 486 at 499, the High Court indicated that at common law the right to a fair trial does not encompass a right not to disclose one's defence. I have nonetheless chosen to analyse them against the more general right to a fair hearing. That is because it is at least arguable that some forms of compulsory defence disclosure could breach the right to a fair hearing under commonly accepted due process principles, informed by the charter rights discussed above. However, for the reasons that follow, I have concluded that the defence disclosure requirements in the bill do not limit the right to a fair hearing.

In summary proceedings clauses 50 and 51 require the accused to give notice of evidence of alibi and expert evidence seven days before a contest mention hearing or summary hearing. At trial the same notice has to be given 14 days before trial.

The reasons for notice are both principled and practical. As a matter of principle, a central goal of the criminal process is truth finding and to allow expert or alibi evidence to be given without a reasonable opportunity for the prosecution to test it could well defeat that goal. From a practical perspective, if such evidence is called without notice, the prosecution would usually be granted an adjournment to properly investigate and respond to such issues, resulting in wasted court resources.

Clauses 55 (for summary proceedings), 125 (for committal proceedings) and 179 (for trials) give the court the power to hold hearings for case management purposes. Such case management is critical to ensuring that court resources are efficiently used and directed at issues that are genuinely in dispute. In order for those hearings to be effective, the bill gives the court the power to request (but not require) information about, for example, the evidence that the accused intends to call, the issues in dispute and special requirements for witnesses. These powers are carefully structured not to interfere with the right to a fair hearing and to strike an appropriate balance.

Clauses 182 and 183 (re-enacting sections 6 and 7 of the Crimes (Criminal Trials) Act 1999) create an information-sharing regime for cases going to trial. The prosecution must file and serve a prosecution opening outlining the case against the accused, including the 'acts, facts, matters and circumstances' relied on. The accused must then respond by identifying which of those 'acts, facts, matters and circumstances' the defence takes issue with.

This regime is important in narrowing the issues at trial to make sure that valuable court and jury resources are carefully used. However, clause 183 does not abrogate the common-law right to put the prosecution to proof on each element of the offence.

Power to order legal representation

Clause 197 raises a number of charter rights and represents a balancing between rights, which, in my opinion, has the ultimate effect of enhancing fair hearing rights.

Clause 197 re-enacts section 360A of the Crimes Act 1958. It prevents the court from staying or adjourning a trial because an accused has been refused legal assistance. It was enacted to deal with problems highlighted in the High Court's decision in *R v. Dietrich* (1992) 177 CLR 292, in which it was held that if the trial judge forms the view that a fair trial is unlikely because of the accused's inability to obtain legal representation, a stay of proceedings may be ordered. This can create a stalemate if legal aid is refused in a case where the court considers that legal assistance is necessary to ensure a fair trial. Clause 197 creates a circuit breaker for this problem by empowering the court to order Victoria Legal Aid to provide legal assistance to an accused.

Before making such an order, the court must be satisfied that the accused cannot afford the full cost of private legal representation. It would be inappropriate for the prosecution to be actively involved in such determinations and, as a result, the bill requires the defence to satisfy the court of the

accused's inability to afford representation. This onus on the accused does not breach the right to be presumed innocent as it does not relate to an element of an offence.

Clause 197 ensures that charges are resolved by a jury rather than being stayed due to lack of representation. It does so by empowering a court to order legal assistance which in turn enhances access to legal representation. That strikes the correct balance and does not limit the right to a fair hearing. In order to ensure that it is not taken as a provision overriding the charter, the charter is expressly excluded from the phrase 'despite any rule of law to the contrary'.

Section 25: rights in criminal proceedings

Section 25 sets out detailed procedural rights in criminal proceedings and I will address each substantive right in the context of the bill. Some of these are informational rights that require active steps to ensure compliance. I have identified where the bill takes such active steps.

(1) A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Section 25(1) protects the presumption of innocence, a well-recognised civil and political right and a fundamental principle of the common law. It provides that a person charged with a criminal offence is entitled to be presumed innocent until proven guilty of committing the offence charged.

The presumption of innocence places the burden of proof on the prosecution to prove the guilt of the accused beyond reasonable doubt. This usually means the prosecution must prove both the physical and the fault elements of an offence and disprove any exceptions or defences raised by the accused. Reverse onus provisions, or laws that shift the burden of proof to the accused or apply a presumption of law or fact against an accused, may breach the right. The bill contains no such provisions.

However, clause 72 (re-enacting section 130 of the Magistrates' Court Act 1989) places an evidential onus on an accused in summary proceedings. An accused who wishes to rely on an exception, exemption, proviso, excuse or qualification in relation to an offence heard summarily, must point to or present evidence that suggests a reasonable possibility of facts that, if they existed, would establish it. Once this happens, the prosecution bears the legal burden of disproving the issue beyond reasonable doubt. Clause 72 applies to both summary offences and indictable offences triable summarily. However, in relation to indictable offences, an accused has the right to trial by jury, which will avoid the application of clause 72.

There are competing views internationally as to whether the imposition of an evidential onus amounts to a limit on the presumption of innocence. The Supreme Court of Canada has taken the approach that an evidential onus to raise a defence does not limit the presumption of innocence because it does not require the accused to prove anything and does not reduce the standard of proof on the prosecution. Similarly, the Court of Final Appeal in Hong Kong has generally regarded an evidential burden as consistent with the presumption. In the United Kingdom, it has been held that an evidential onus can, depending on the circumstances, amount to a limit.

I consider that an evidential burden will not ordinarily give rise to a limit upon the right to be presumed innocent. An evidential burden can be an entirely appropriate way of ensuring that a criminal hearing only deals with issues that are genuinely open on the evidence available. In relation to clause 72 specifically, I note that it does not require an accused to give or call evidence but merely to point to evidence available to the court (whether it forms part of the prosecution or defence case). It also only applies to an exception, exemption, proviso, excuse or qualification, therefore focusing on true defences rather than core elements of an offence, which remain the sole responsibility of the prosecution to prove.

On that basis, if an evidential onus is capable of limiting the presumption of innocence, I am satisfied that clause 72 does not do so.

(2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees —

(a) to be informed promptly and in detail of the nature of the charge in a language or, if necessary, a type of communication that he or she speaks or understands;

Under section 25(2)(a) of the charter, a person charged with an offence is entitled to be informed of the nature and cause of the charge in detail and promptly. The purpose of the section is to ensure that the accused is told, in a timely manner, what he or she is charged with and why. This enables the accused to make decisions regarding how to plead, whether to engage a lawyer, to make family and financial arrangements and so on.

The bill ensures that at key points in a criminal proceeding there is an express obligation on the prosecution and the court to provide the details of charges and allegations. Beyond that, the bill also provides for a disclosure regime in contested cases. I have considered the more extensive disclosure regime below in relation to the right to adequate time and facilities, although it is relevant to this right as well.

In relation to an initial charge in the Magistrates Court (and the allegations underlying the charge), clauses 6(3), 13–17, 21, 24 and 32 provide for appropriate levels of information to be given. In relation to indictments for trial, clauses 159(3) and 171 are relevant. The minimum requirements for the detail that must be included in a charge are in schedule 1.

The service provisions in the bill are also designed to ensure that an accused actually receives notice of charges and allegations (clauses 338, 339, 342–347). Underlying those core provisions are well-developed common-law powers to ensure that adequate particulars of charges are given, and a general power to adjourn proceedings (clause 331) which can be used to remedy any lack of information. The bill also creates a new preliminary brief process in summary proceedings, which requires the prosecution to provide a sworn statement of the allegations early in certain summary cases (clauses 35–38).

The bill also includes an absolute requirement in all proceedings where imprisonment is available, for an interpreter if an accused does not have sufficient understanding of the English language to understand the proceedings (clause 335).

There are a number of clauses in the bill that confirm and regulate the power of a court in indictable proceedings (clause 239) and on appeal (clause 277) to convict an accused of an offence other than the offence charged if it is an alternative or lesser included offence. In summary proceedings, this power only extends to an attempt to commit the offence (clause 76).

These provisions raise the accused's right to be informed of the charge in that an accused is at risk of conviction of an offence which is not contained in a charge sheet or indictment. However, the power to convict of alternative offences is a longstanding and important part of the criminal justice system and the courts have always been vigilant to ensure that proper safeguards are in place to protect the interests of the accused. Those common-law safeguards continue to operate and are supplemented by the statutory powers in the bill. The most important safeguard is that an offence must be a true alternative to the offence charged; all of the elements of the alternative offence must also be elements of the charged offence (see e.g. clause 277 which sets out this requirement explicitly). At trial, the court has an express power to prevent a jury from considering an alternative offence if the court considers that the interests of justice require it.

A power to convict for alternative offences is important to the efficient running of the criminal justice system. If it did not exist then, where an alternative offence is clearly appropriate, a charge would need to be relaid and the criminal process started afresh. Alternative offences can also assist an accused, particularly in a jury trial, by allowing for the possibility that a less serious charge will be accepted as appropriate.

Consideration of reasonable limitations — section 7(2)

These provisions raise and, on the face of it, limit an accused's section 25(2)(a) right to be properly informed promptly and in detail of the nature of the charge. However, in my opinion, they represent a justifiable and reasonable limitation in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

A person charged with a criminal offence has the right to be informed promptly and in detail of the nature and cause of the charge. The right is directed to ensuring that an accused can make informed decisions with knowledge of the charges faced.

(b) the importance of the purpose of the limitation

The power to convict an accused of a different offence to the one charged is important for the efficient and fair operation of the criminal justice system. Where an alternative offence is appropriate, it avoids a charge having to be relaid and the criminal process started afresh and can assist an accused by allowing a conviction for a less serious charge.

(c) the nature and extent of the limitation

The accused is at risk of a conviction for an offence that is not contained in a charge sheet or indictment. However, the limitation is not significant as the alternative offence must be a lesser included offence or a true alternative offence.

(d) the relationship between the limitation and its purpose

The limitation is rationally connected and proportionate to the purpose of ensuring the efficient and fair operation of the criminal justice system.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) other relevant factors

At trial, the court has an express power to prevent a jury from considering an alternative offence if the interests of justice require it (clause 240). On appeal, the sentence imposed for the alternative offence must be no more severe than the original sentence imposed (clause 277(1)(c)).

(g) conclusion

The limitation is proportionate to the desirability of ensuring the smooth and efficient administration of justice and fairness to the accused.

(b) to have adequate time and facilities to prepare his or her defence and to communicate with a lawyer or adviser chosen by him or her;

The right to adequate time and facilities applies at all stages following the laying of a charge and through until final determination of a charge. The purpose of the section is to enable the accused to have his or her interests properly and adequately represented in order to make informed decisions relating to the preparation of his or her defence.

The principal ways in which the bill impacts on this right are in relation to time limits and disclosure. The bill does not raise any issues specifically relating to the right to communicate with a lawyer or legal adviser, other than in relation to the reduction of limitation periods in the Children's Court where such communication is expressly facilitated (clause 376).

Time limits within which, for example, a trial must be held, can, for obvious reasons, impact on the right to adequate time to prepare. What will be adequate will depend on the circumstances of each case and will vary depending on the stage of the proceedings, the complexity of the case and the accused's access to evidence, his or her lawyer and the time limits prescribed by law.

The bill provides time limits at each stage of the proceeding — from the filing of a charge sheet (clause 7), certain indictments (clause 163 sexual offences), and notice of appeal (clause 255); to the time for filing a hearing (clause 99), committal mention hearing (clause 126), determining certain committal proceedings (clause 99); and for commencing trials (clauses 211 and 212). However, the court retains broad discretions to extend or abridge time limits if the interests of justice require it both by way of a court's inherent power to manage its own proceedings and specifically in the bill (clauses 19, 247 and 313).

Proper disclosure of the prosecution case is important to ensure a fair hearing generally. The bill introduces better and more consistent prosecution disclosure in summary (clauses 35–49), committal (clauses 107–117) and trial proceedings (clauses 185–188). The disclosure provisions are

based on three basic principles: that disclosure should be full (comprising all material genuinely relevant to the charges including potentially exculpatory material); timely (to allow the accused to properly prepare); and ongoing (until and during hearing or trial). The bill also ensures that courts have explicit powers to make rulings on disputes about disclosure. The bill now includes explicit statements that disclosure is a continuing obligation. It also now provides an express disclosure obligation in trials.

The bill protects justified restrictions on the accused's access to information in certain circumstances. For instance, clause 48 allows the prosecution to refuse disclosure of information where to do so unreasonably encroaches on the right to privacy of a witness or may jeopardise law enforcement or the safety of relevant others including their family members and clause 363 saves any existing legal justifications for refusing to disclose. All decisions by the prosecution to refuse disclosure are reviewable in court (clauses 46, 125(1)(e) and 181(2)(i)).

This refined approach makes disclosure obligations, rights and remedies clearer and more accessible and as a result promotes the right to adequate time and facilities.

(c) to be tried without unreasonable delay;

The right to be tried without unreasonable delay protected by section 25(2)(c) of the charter reflects the common-law principle that justice delayed is justice denied. The section is intended to protect the right of the accused to examine evidence led against them while the evidence can still be tested and reflects the public interest in having criminal offences heard and determined expeditiously. The bill does not contain any clauses that limit an accused's right to be tried without unreasonable delay. Indeed, the time limits in the bill (discussed in the preceding section of this statement) are aimed at reducing delay and promoting the timely resolution of prosecutions.

In addition, clauses 211 and 212 introduce time limits where the Court of Appeal orders a new trial. A new trial must be commenced within six months of the date of the order and new trials in relation to sexual offences must be commenced within three months, unless those periods are extended by the court.

Other initiatives in the bill are also designed to help to reduce delay. These include the new notice to appear process in summary proceedings (clauses 21–26) and the introduction of interlocutory appeals (clauses 295–301) which will help in avoiding unnecessary retrials, which cause significant delay. The bill also promotes and encourages the early resolution of issues before trial through clearer pretrial processes and powers (clauses 179–206).

(d) to be tried in person, and to defend himself or herself personally or through legal assistance chosen by him or her or, if eligible, through legal aid provided by Victoria Legal Aid under the Legal Aid Act 1978; and

The charter protects the right of an accused to be tried and to defend himself or herself in person or through legal assistance.

Several clauses in the bill raise and promote the right of an accused to defend himself or herself through legal assistance. For example, clause 33 requires the court to grant an adjournment to allow an unrepresented accused facing a custodial sentence to seek legal advice. As discussed earlier, clause 197 permits the court to order Victoria Legal Aid to provide legal representation for the accused and to adjourn the proceedings until representation is provided, if a fair hearing cannot otherwise be had.

The bill also contains clauses designed to assist an unrepresented accused. In particular, clauses 68 and 228 require the court to inform an unrepresented accused about their options to answer the charge, including remaining silent or giving or calling evidence.

Section 25(2)(d) also entitles an accused to be tried in person. Several clauses in the bill raise an accused's right to be tried in person as they allow summary proceedings to be determined in the accused's absence (e.g. clause 80). Such powers are needed to ensure that less serious charges can be resolved where an accused chooses not to appear, with knowledge of the consequences of not appearing. However, there are strict protections and safeguards to ensure that this step is only taken when appropriate.

Notice of the fact that the court can determine an indictable offence in a corporate accused's absence must be given with a summons (clause 15). Only purely summary offences (not indictable offences) can be determined in a (natural person) accused's absence (clauses 80 and 81). The court retains the option not to determine a charge in the accused's absence (clause 80). There are additional safeguards in the form of the right to apply (and in some cases receive) a rehearing and limitations on the court's ability to impose certain sentencing orders unless the accused is present (clauses 87 and 94).

Clauses 135 and 136 allow a court to continue with a committal hearing if the accused applies to be absent, absconds or has to be removed for disruptive behaviour. However, under clauses 137 and 138 an absent accused cannot be committed for trial. The County and Supreme courts have similar powers at common law, which are exercised rarely and carefully. The bill does not alter those powers.

Consideration of reasonable limitations — section 7(2)

These procedures raise and, on their face, limit the section 25(2)(d) right to be tried in person. However, in my opinion they are a reasonable and justifiable limitation in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

A person charged with a criminal offence has the right to be tried in person and to defend himself or herself either in person or through legal representation. This is an important right.

(b) the importance of the purpose of the limitation

The limitation is important for the efficient operation of the criminal justice system as it allows less serious charges to be resolved where an accused makes an informed choice not to appear and for committal proceedings to continue in an accused's absence. This provides certainty for the community and victims of offences.

(c) the nature and extent of the limitation

The court may hear and determine summary charges where an accused is informed of the consequences and chooses not to attend. Also, committal proceedings may continue where the accused absents himself or herself or has been removed. However, the limitation is relatively minor as it does not prevent an accused from attending, rather allows the accused to choose not to attend and only applies to purely summary (not indictable) offences and committal proceedings (where charges are not finally determined).

(d) the relationship between the limitation and its purpose

The limitation is rationally connected and proportionate to the purpose of ensuring the efficient operation of the criminal justice system.

(e) any less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose. The provisions incorporate appropriate safeguards to protect the interests of the accused as discussed above.

(f) other relevant factors

The court retains a discretion not to hear a charge in the accused's absence, there is an automatic rehearing right where an accused was not properly served and the court is not permitted to commit an accused for trial or to impose certain sentences in the accused's absence.

(g) conclusion

The limitation is proportionate to the desirability of ensuring the smooth and efficient administration of justice.

(e) to be told, if he or she does not have legal assistance, about the right, if eligible, to legal aid under the Legal Aid Act 1978; and

A number of provisions have been added to the bill to ensure that this informational right is complied with at key points in the criminal process. Those are when a charge is filed (clause 13), when a person is committed for trial (clauses 110(1)(a)(iv) and 144(2)) and when a direct indictment is served (clause 171(1)). In addition, the requirement applies where an unrepresented accused appears to defend themself against a charge for an offence punishable by imprisonment (clause 33).

(g) to examine, or have examined, witnesses against him or her, unless otherwise provided for by law; and

Section 25(2)(g) effectively creates a presumption of cross-examination, to ensure that the accused has an adequate opportunity to challenge and question a witness who will give or has given evidence against him or her.

The right to cross-examine prosecution witnesses is qualified by the words 'unless otherwise provided by law'. This recognises that there can be good reasons for departing from the general rule but that they must be prescribed by law and be carefully designed to ensure an appropriate balance between competing interests. The restrictions on cross-examination in the bill meet these criteria.

The restrictions on cross-examination relate primarily to committal proceedings. Committal proceedings involve a preliminary examination to assess whether the accused should be committed for trial. Importantly, charges are not finally determined in a committal proceeding.

In relation to witnesses (other than children and cognitively impaired witnesses in sexual cases), the bill provides for no cross-examination in a committal proceeding without leave. Clauses 118–120 re-enact a regime created in the Courts Legislation (Jurisdiction) Act 2006. That act reformed committal proceedings so that oral evidence is not given unless it is relevant and justified having regard to the purposes of a committal proceeding (which includes ensuring a fair trial). This was part of overall change to the committals process to focus on achieving outcomes through a cooperative approach. It was aimed at reducing delays and identifying guilty pleas earlier in the process, without compromising fairness or accessibility. It does not restrict the right to cross-examine at trial.

Clause 123 completely prohibits the cross-examination of child complainants and cognitively impaired complainants in sexual offence cases. The vulnerability of such witnesses clearly justifies the absolute rule against cross-examination at committal. Such witnesses can still be cross-examined as part of the trial process through the special hearing procedures outlined in sections 41G and 41H of the Evidence Act 1958.

Clause 232 allows the trial judge to permit a witness to give evidence by audio or audiovisual recording or in any other manner. It is a discretionary and flexible case management tool to ensure that evidence is given in a way which best assists a jury. Subclause (2) ensures that if unanticipated issues arise, the judge can order the witness to attend court. This discretion already exists and will only be exercised in appropriate cases.

(h) to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses for the prosecution; and

An accused's right to obtain the attendance and examination of defence witnesses ensures that the accused and the prosecution are placed on an equal footing with regard to summonsing and examining witnesses. The bill promotes this right, providing that an accused may apply for a witness summons or a subpoena (clause 336) to compel a person to attend to give evidence or produce documents, a broad power to allow evidence to be taken before trial on the application of either party (clause 198) and a power to order that evidence be taken following committal (clauses 149–152).

Clause 104 provides for the Magistrates Court to make an order for a compulsory examination hearing in a committal proceeding if satisfied that it is in the interests of justice to do so. The application can only be made by the prosecution and I have considered its compatibility with this right.

The clause lists a number of factors that the court must consider, including whether the witness has refused to make a statement and whether the witness is or has been a suspect in relation to the matter. These factors highlight the investigative purpose of the process, which is designed to deal with witnesses who will not otherwise provide information. If, after a compulsory examination, the prosecution wishes to rely on the evidence of the witness, the accused can apply to cross-examine the witness at the committal hearing. There are

also safeguards in the compulsory examination process itself so that the accused is notified of a hearing and may attend.

Although there is no precisely equivalent process for an accused, the bill provides (as noted above) processes to allow the accused to secure the attendance of witnesses at the key stages of the criminal process on the same basis as the prosecution. The ability to apply for evidence to be taken after committal is in fact only available to the accused (clauses 149–152). On an overall assessment, I do not consider that the accused is disadvantaged by comparison to the prosecution because of a lack of access to the compulsory examination process.

For these reasons, I conclude that the compulsory examination process does not limit the right to obtain the attendance and examination of witnesses under the same conditions as the prosecution. I have based that conclusion on an assessment of all of the accused's opportunities to obtain the evidence of witnesses contained in the bill.

(i) to have the free assistance of an interpreter if he or she cannot understand or speak English; and

The bill includes an absolute requirement in all proceedings where imprisonment is available for an interpreter if an accused does not have sufficient understanding of the English language to understand the proceedings (clause 335). There are no clauses that limit this right.

(k) not to be compelled to testify against himself or herself or to confess guilt.

I have already discussed the relevance of this right in the context of defence disclosure in relation to section 24 (fair hearing). There are no clauses that limit this right but there are three issues that arguably raise it, namely diversion, case conferences and sentence indications.

Clause 59 provides that the Magistrates Court may adjourn a proceeding to allow an accused to undertake a diversion program. This clause applies to less serious driving offences involving alcohol or drugs where the accused acknowledges responsibility for the offence. The requirement to acknowledge guilt raises the right not to be compelled to confess guilt. However, clause 59(3) provides that this acknowledgement is inadmissible as evidence in a proceeding for that offence. If the accused completes the program and is discharged, subclause (4)(d) confirms that the accused cannot be charged with the offence again.

In light of these safeguards, and the benefits to the accused and the community of a successful diversion process, any limitation of the right not to be compelled to confess guilt would be justified. However, there is no compulsion to plead guilty in this process and the right is not limited as a result.

The bill provides for case conferences to be held in both summary and committal proceedings (clauses 54 and 127). However, in order to ensure that an accused is not at risk of making statements against interest, the bill provides that the content of those conferences are inadmissible in any hearing of the charge (clauses 54(7) and 127(3)). An accused is not compelled to admit guilt or testify, and the risks associated with the process are ameliorated by the evidential protections. As a result, these clauses do not limit the right in section 25(2)(k).

Clauses 60–61 and 207–209 provide for sentence indications. When the Criminal Procedure Legislation Amendment Bill 2007 (which introduced sentence indications) was before Parliament, the Scrutiny of Acts and Regulations Committee raised the issue of whether sentence indications will compel an accused to plead guilty. When considering sentence indications, the Sentencing Advisory Council considered this issue and tailored its recommendations to operate in a way that would not result in any compulsion or improper inducement. Under the bill (which follows the existing legislation), a sentencing indication may only be given where the accused has sought an indication and the accused is free to choose whether to seek an indication. The bill is consistent with the council's recommendations and I remain of the view that in this regard, the bill is compatible with the accused's right not to be compelled to plead guilty.

(4) Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.

The bill provides comprehensive appeal rights to the County Court from the Magistrates Court against conviction and sentence on a de novo basis. The superior court takes a fresh plea and rehears all of the evidence in this process. Clause 283 provides an additional avenue of appeal to the Court of Appeal for a person sentenced to a term of imprisonment on appeal in the County Court (having received a non-custodial sentence in the Magistrates Court). Finally, an accused can choose instead to appeal on a question of law to the Supreme Court from the Magistrates Court (clause 272). This right of appeal provides an avenue for the accused who wishes to have a legal error corrected rather than the case reheard. The County Court has the power to award costs where an appeal is dismissed or struck out and was brought vexatiously, frivolously or in abuse of process (clause 354). I have considered whether this may limit the right to appeal by acting as a disincentive. However, given the restriction to appeals brought vexatiously, frivolously or in abuse of process, it will not have that effect.

The bill also provides comprehensive appeal rights to the Court of Appeal from the County Court or Supreme Court against conviction and sentence. These appeals are conducted on a review basis, focusing on identifying error in the primary proceedings rather than rehearing a case afresh. Clause 3 clarifies the proceedings from which appeals can be taken to the Court of Appeal by adopting a wide and inclusive definition of 'originating court'. This will resolve possible ambiguity in the current law about the availability of appeal rights.

Section 580(2) of the Crimes Act 1958 allows the Court of Appeal to summarily dismiss an appeal against conviction. That power is obsolete and inappropriate in light of the charter and is not re-enacted in the bill.

Leave to appeal provisions

An accused requires leave to appeal to the Court of Appeal against both conviction and sentence. This raises the issue of whether a requirement for leave is compatible with the charter right to review of conviction and sentence. This is a question that needs to be considered in context and will depend on the nature of the leave process and the practices and principles developed by the Court of Appeal. I consider that the requirement to seek leave to appeal does not result in an

appeals system that is incompatible with the charter. That is primarily because of the processes that the Court of Appeal has adopted in relation to leave for both conviction and sentence appeals.

For conviction appeals, applications for leave are determined on the basis of the merits of the appeal. There is ordinarily no second hearing if leave is granted. If leave is refused, that is based on a reasoned consideration of the merits. The Human Rights Committee of the United Nations has confirmed that where leave to appeal is determined in this comprehensive manner then a system requiring leave to appeal can be consistent with a right to review. I consider that is the case in Victoria.

For appeals against sentence, the requirement for leave to appeal is also compatible with the charter, but for different reasons. A single judge of appeal ordinarily hears applications for leave to appeal. However, an accused has an absolute right to have a refusal of leave by a single judge referred to the Court of Appeal itself (clause 315(2)). The Court of Appeal has also adopted a practice of full review of the merits when determining applications for leave to appeal against sentence, whether by a single judge or the Court of Appeal itself.

The bill will allow a single judge of appeal to refuse leave to appeal against sentence by an offender if there is no reasonable prospect of the sentence being reduced on appeal (clause 280). This is a sensible case management tool to avoid the time and expense of fruitless appeals. However, any refusal of leave on that basis can be referred by the appellant, as discussed above, to the Court of Appeal under clause 315(2).

<u>Section 17: protection of families and children</u>
<u>Section 23: children in the criminal process</u>
<u>Section 25(3): rights in criminal proceedings (accused children)</u>

Children involved in criminal proceedings are afforded special protections under the charter. To avoid repetition, these are considered together below.

Section 17(2) provides:

> Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Section 23 provides:

> (1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.
>
> (2) An accused child must be brought to trial as quickly as possible.
>
> (3) A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

Section 25(3) provides:

> A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation.

Children are entitled to special protection because of their vulnerability as minors. The charter recognises two categories of children involved in the criminal process that hold specific rights in addition to the rights which apply to all people. Those are children accused of criminal offences (sections 23 and 25(3)) and children who are witnesses (particularly complainants) in criminal proceedings (section 17(2)). Provisions that raise the rights of accused children and child witnesses are considered in turn below.

Children charged with offences

Victoria has a comprehensive regime to protect the rights of children in the criminal process and a best practice system for the punishment of young offenders, embodied in the Children, Youth and Families Act 2005 (CYFA). Criminal charges against children are primarily dealt with in the Children's Court, which uses its own modified criminal procedure rules.

The bill makes two relevant amendments to the CYFA that engage the rights under the charter discussed above, namely reducing the limitation period for summary offences and providing for joint committals.

Clause 376 inserts new Part 5.1A in the CYFA. The part shortens the time limit for filing charges for summary offences in the Children's Court from 12 to 6 months, with the power to order a six-month extension. This reduction is designed to ensure that children are dealt with as quickly as possible in order to reduce delay-related anxiety and stress. Timely resolution of charges increases the prospects of successfully intervening in offending behaviour. The clause engages and promotes the section 23 right of an accused child to be brought to trial as quickly as possible and the section 25(3) right for special procedures that take account of the child's age and the desirability of promoting the child's rehabilitation.

The court may allow a charge to be filed up to 12 months after the alleged offence if it is justified on the basis of sworn evidence. Mandatory criteria ensure that extensions of time will be granted only when appropriate. The limit can also be extended by consent which can only be given after legal advice is obtained.

Clauses 373 and 377 of the bill amend the CYFA and the Magistrates' Court Act 1989 (MCA) to allow for a joint committal proceeding where a child and an adult are charged in relation to the same offence, in certain limited circumstances. The bill inserts mirror provisions in the CYFA (section 516A) and in the MCA (section 25(3) and (4)) to allow for this procedure. A joint committal raises the accused child's right to be treated in a way that is appropriate for his or her age. Joint committals avoid duplication of proceedings, save witnesses from having to give evidence twice and help to reduce delay.

The procedure is only available where the relevant charges cannot ultimately be determined in the Children's Court, including murder, attempted murder, manslaughter, arson causing death or culpable driving causing death. The child accused must be over 15 years of age and the court must be satisfied that the charges against each accused would ordinarily be tried together in the County Court or the Supreme Court.

Both courts must agree that joint committal proceedings are appropriate in the particular case, having regard to the age and ability of the child, the effect on victims and the estimated duration of the proceedings. There may be other important matters to consider, for example, the availability of appropriate remand facilities for children in the Magistrates Court and the bill includes a broad discretion to have regard to any other relevant matter. Finally, at the committal hearing the provisions of the CYFA apply, as far as practicable, to the child accused.

These safeguards will ensure that joint committals will only be ordered when adequate protections for the child exist in the particular case. Accordingly, I do not consider that the joint committals procedure limits any of the protective rights under the bill.

Child witnesses

The bill provides for differential treatment of children as compared to adults where a child is a witness or a complainant in sexual offence proceedings. The purpose of these provisions is to protect them from unnecessary trauma and delay. These provisions were discussed earlier in the context of the charter section 8 right to equality and protection against discrimination. They promote the rights of children protected in the charter.

Segregation

Finally, clause 333 provides that the Magistrates Court may return a child accused, who is already undergoing a sentence of detention, to a youth justice centre rather than remand them in custody. This engages and promotes the right of accused children to be segregated from detained adults.

Section 26: right not to be tried or punished more than once

This provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

There are no provisions in the bill that raise this right. The pleas of autrefois convict and autrefois acquit (which are the primary procedural protection of this right) are specifically referred to in clause 220 (although the language has been modernised). The right not to be punished more than once does not apply to prevent prosecution appeals against sentence, or to increase a sentence on an appeal by an accused. That is because an increased sentence on appeal involves substituting one sentence for another, not imposing a second sentence on top of the first. I also consider that, as the Supreme Court of Canada has held in relation to an identical right, this right applies only after appeal proceedings are concluded (*R v. Morgentaler* [1988] SCR 30).

The bill removes consideration of 'double jeopardy' as a factor on DPP appeals against sentence. The DPP has the power to appeal against a sentence. Despite the fact that the DPP may show that a sentence is manifestly inadequate, the appeal court may currently decline to increase the sentence, or reduce the amount of any increase, because of what is described as 'double jeopardy'. The bill removes this as a factor on such appeals in order to ensure that inadequate sentences are corrected. This is different from the principle of double jeopardy protected by the charter and does not raise section 26 issues.

Section 27: retrospective criminal laws

Nothing in the bill raises the right to be protected from retrospective criminal laws. The bill does not currently include transitional provisions as there will be a follow-up bill containing those and consequential amendments. I will include consideration of section 27 at that time to ensure that the transitional provisions are compatible.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act, be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The development of Victoria's criminal procedure laws

Victoria's criminal procedure laws are a mix of common law and statute law. At the time our laws were inherited from England, they were predominantly comprised of common law. The first Victorian act concerning criminal procedure was contained in the Criminal Law and Practice Act 1864. These laws did not cover every aspect of criminal procedure. That act complemented the common law and primarily focused on providing legislative solutions to particular problems that had arisen with the operation of the common law.

Statute law has become increasingly important. The key piece of legislation is the Crimes Act 1958; it is closely based on earlier consolidations. Before 1958, there were five consolidations at regular intervals which ensured the principal act remained relatively coherent. The Crimes Act contains provisions dealing with three main areas of law, criminal procedure, investigation powers and offences.

Fifty years and over 1500 amendments later, the Crimes Act is no longer logical or coherent. Many provisions are now obsolete. Others are still relevant, but are incoherent. Successive amendments have made some provisions hard to find and others difficult to understand.

It is time to overhaul and modernise Victoria's criminal procedure laws.

Problems with the current criminal procedure laws

There are a number of other significant problems with criminal procedure laws.

The law is difficult to locate. Appeals to the Court of Appeal are in the Crimes Act but appeals to the County Court are in the Magistrates' Court Act 1989. Within the Crimes Act, between some procedure provisions, there are more than 100 pages of legislation concerning matters such as taking DNA and fingerprints.

Many laws are difficult to understand. Some provisions in the Crimes Act are exactly the same as they were when they were passed in 1864. Some laws were introduced decades ago to address a specific problem but it is no longer apparent what that problem was. This results in uncertainty about the law or new meanings being developed so that the provisions have some meaning.

The law is complex. Because our criminal procedure laws are located in different acts and have been developed and amended separately, similar issues are dealt with differently for no good reason.

Comprehensive review of criminal procedure

In recent decades, criminal procedure has been changing to recognise the needs of victims, reduce delay and use resources more efficiently and effectively.

While expectations and demands upon the criminal justice system have been increasing, the basic tools used by the courts, police and legal practitioners, being criminal procedure laws, are no longer up to the task at hand. Therefore, the justice statement indicated that the Crimes Act and criminal procedure needed to be overhauled and modernised.

This is the first comprehensive review of criminal procedure in Victoria. The bill is the result of a substantial review conducted by the criminal law justice statement unit in the Department of Justice in consultation with the courts, legal profession and Victoria Police. Throughout the course of the review, the criminal law justice statement advisory group has provided invaluable expert advice concerning problems that need to be addressed and solutions to those problems. I would like to take this opportunity to thank the officers of the Department of Justice and parliamentary counsel responsible for developing and drafting this bill, the members of the advisory group for their contribution and advice and the commitment of all concerned to improving our criminal procedure laws.

Objectives of this bill

Criminal procedure laws should be as clear, simple and accessible as possible.

There should be one integrated set of criminal procedure laws.

Criminal procedure laws need to be fair and effective. In 2006, this government introduced the Charter of Human Rights and Responsibilities. To ensure that criminal procedure laws give effect to, and promote these rights and responsibilities, the bill changes a number of existing laws particularly as they affect victims and the accused. Further, our criminal procedure laws aim to create an environment in which the criminal justice system does not convict the innocent nor acquit the guilty.

Criminal procedure laws must support and promote an efficient criminal justice system. Our courts deal with many cases each year. Case management practices need to create a structure that provides sufficient certainty and consistency to create an efficient system while providing sufficient flexibility to adapt to the individual needs of each case.

Court time is valuable and court appearances can be expensive. Case management processes need to make the most of each court hearing. Early case preparation and discussion between the parties can avoid unnecessary court appearances and ensure that hearings focus on the most important issues.

Apart from being a large system in which offences are prosecuted, criminal procedure laws provide the framework within which important matters are dealt with that can have significant impact on the lives of many people. Going to court can be a major event in a person's life. It is therefore important that criminal procedure laws recognise this impact. This bill minimises the impact of necessary procedures on victims, witnesses, jurors and the accused.

Overview of the bill

There are five key themes to the overhaul of criminal procedure laws in this bill.

First, the bill consolidates existing criminal procedure laws. Instead of being located in three different acts — the Crimes Act, the Magistrates' Court Act and the Crimes (Criminal Trials) Act 1999 — these laws are in one bill.

Second, the bill harmonises criminal procedure laws. Procedures in different jurisdictions should be the same unless there are good reasons why they should be different.

Third, the bill abolishes redundant and obsolete provisions.

Fourth, the bill rationalises the law by replacing multiple provisions with a single provision, such as the power to adjourn a proceeding.

Fifth, the bill modernises criminal procedure laws by:

> using plain English and clear and consistent terminology;
>
> placing provisions in a chronological order;
>
> adopting a consistent approach to whether provisions should form part of the body of an act, a schedule to an act or court rules;
>
> using clearer drafting techniques including headings which describe provisions better and notes to refer to other relevant definitions or provisions.

As the use of plain English and clear and consistent terminology is important in understanding the bill, I shall now discuss a number of these improvements.

Existing laws refer to the 'defendant' in the Magistrates Court and the 'accused' in the County and Supreme courts. The bill refers to the 'accused' irrespective of the jurisdiction. This is consistent with the approach used in the Charter of Human Rights and Responsibilities and removes an unnecessary distinction.

For proceedings in the County and Supreme courts, words such as 'presentment', 'further presentment' and 'counts' have been replaced by 'indictment', 'criminal record' and 'charge' respectively. 'Charge' and 'criminal record' are used in the same way in Magistrates Court proceedings.

The Crimes Act contains Latin and Norman French words. The bill uses modern English words. For instance, the bill replaces 'nolle prosequi' with 'discontinuing a prosecution' and 'autrefois acquit' with 'previously acquitted'.

The bill removes antiquated phrases such as providing that a person who pleads not guilty shall 'be deemed to have put himself upon the country for trial'. When first introduced this provision removed the option of trial by ordeal and made trial by a jury mandatory instead. Despite trial by ordeal never being an option in Victoria, this provision remains on the statute book.

Some existing provisions expressly state that parties have a right to be heard, others do not. The development of principles of procedural fairness means it is not necessary to refer to the right to be heard. For the kinds of procedures and powers provided in this bill, this bill operates in accordance with modern requirements of procedural fairness that a party has a right to be present and make submissions at a court hearing which concerns them.

Structure of the bill

As I indicated earlier, the bill adopts a chronological approach to criminal procedure. I shall refer to the most important aspects of chapters 2 to 6, 8 and 9 in some detail. Chapter 1 deals with a number of preliminary matters, including definitions and the commencement of the bill. Chapter 7 concerns references to the Court of Appeal on a petition for mercy. The clause in chapter 7 does not significantly alter the existing provision in the Crimes Act.

Chapter 2 — Commencing a criminal proceeding

Chapter 2 indicates how a criminal proceeding may be commenced: by filing or signing a charge sheet in the Magistrates Court, filing a direct indictment or a court direction that a person be tried for perjury.

Once a criminal proceeding has commenced, there may be a number of stages in that proceeding. For example, a criminal proceeding may be commenced by filing a charge sheet for an indictable offence in the Magistrates Court, followed by a committal proceeding, followed by a trial and appeal to the Court of Appeal. The bill proceeds on the basis that this is one criminal proceeding, although the jurisdiction of different courts may be enlivened at different stages of the proceeding. The structure of the bill reflects this approach. Chapter 2 deals with the commencement of a criminal proceeding and subsequent chapters in the bill refer to matters that may be relevant to that proceeding at certain times.

When a criminal proceeding commences may be relevant to both time limits and transitional provisions. In *R v. Taylor* [2008] VSCA 57 the Court of Appeal held that existing legislation did not create one continuous criminal proceeding, but a number of criminal proceedings could commence in the prosecution of an accused for an offence.

Because the bill operates on the basis that there is one criminal proceeding, this bill differs from existing provisions in a number of ways. For instance, clause 5 expressly indicates how a criminal proceeding commences. Clause 162 expressly provides that 'the filing of an indictment other than a direct indictment does not commence a new criminal proceeding against the accused'. Clause 164 expressly provides that a fresh indictment does not commence a new proceeding. Clause 179 provides that the trial court may exercise directions hearing powers as soon as the accused has been committed for trial. Clause 177 enables the DPP to discontinue a prosecution for an offence where an indictment has not been filed.

Adopting the approach that there is one criminal proceeding creates clarity and certainty.

Chapter 2.2 introduces the notice-to-appear process. Currently, an accused can be required to appear before the Magistrates Court by summons or arrest. The notice to appear process provides a third way.

There are significant delays in the filing of charges in some summary matters. The notice-to-appear process provides a simple and efficient method for requiring a person to attend the Magistrates Court for use in more straightforward cases. The notice will contain basic information including a brief description of the offence, when the person is required to attend court and contact details for the police officer or public official. The notice must be served personally. Within 14 days of issuing the notice, the prosecution must decide whether to file a charge sheet. This provides the prosecution with a short period to decide whether there is any reason not to proceed with the charge. If the prosecution decides not to file a charge sheet, they must notify the person within seven days and the person is not required to attend court.

The notice is not a charge and does not commence a criminal proceeding.

Chapter 3 — Summary procedure

Chapter 3 also provides that certain other matters flow from using the notice to appear. Currently a full brief is requested in many summary cases because:

> there is a lack of basic information about a case;
>
> the prosecution and accused do not discuss the case at an early stage;
>
> the accused is seeking a sentence indication.

In some cases a full brief will be essential. For instance, the charges may be contested, the prosecution case may be unclear or obtaining instructions from a client is difficult. By improving the system, a full brief will be required less often.

If a notice to appear is issued and a charge sheet is filed, the bill provides that the prosecution must prepare a preliminary brief and serve this within seven days of filing the charge sheet. This will always be before the first court date. Clause 37 sets out what must be contained in a preliminary brief. This early provision of information will assist in early resolution of cases. A summary case conference must be held where a full brief is sought or the matter is to be listed for contest mention or summary hearing. The conference may identify ways of resolving a case or the narrowing of issues or information sought as part of a preliminary brief.

The benefits of the notice-to-appear process include reducing delay in the commencement of proceedings, requiring personal service of the notice and providing more information to the accused at an earlier stage.

Realising the full benefits of these changes will require cultural change in the prosecution, defence practitioners and the courts. The best ways of operating this system and generating cultural change will be assessed through a pilot program. The pilot program will be in the Magistrates Court. This process will not be used in the Children's Court. A different approach to address delay in the Children's Court,

tailored to the needs of children and young persons, will be used which I will discuss later.

To ensure that there is proper disclosure of the prosecution case wherever it is required, the bill replaces the existing incomplete and inconsistent disclosure processes. The bill also introduces consistency in the categories of disclosure between summary, committal and trial proceedings. The idea that disclosure must be full, timely and ongoing underpins the new disclosure processes.

The bill provides better protection for the privacy of victims and witnesses who make statements for the prosecution. The bill also creates simpler mechanisms for dealing with disagreements about whether there has been full disclosure of the prosecution case and clearly sets out the main grounds on which the prosecution may refuse to disclose information.

The harmonisation of disclosure processes, obligations and rights under the bill will make the law less complex, more consistent and fairer. It will also be more efficient for prosecuting agencies in creating systems for disclosure for different types of proceedings.

Chapter 3 makes other improvements to summary proceedings by clearly setting out the procedures to be followed in a summary hearing, including special provisions concerning proceedings conducted in the accused's absence.

Chapter 4 — Committal proceeding

There have been many significant reforms to committal proceedings in the last 25 years. These reforms have included new procedures, new powers and new approaches to deal with new challenges and a changing environment. The Courts Legislation (Jurisdiction) Act 2006 introduced significant changes to committal proceedings. These reforms shifted the focus of committal proceedings from complying with processes to achieving outcomes.

This bill clarifies, reorganises and modernises committal proceeding provisions. Chapter 4 now clearly sets out the different stages in a committal proceeding and how a case may proceed through the committal process.

Clause 145 provides that upon committing an accused for trial, the court must transfer all related summary offences to the court that will deal with the indictable offences. Currently these charges are adjourned to be dealt with later. If the County or Supreme Court is conducting a plea for an indictable offence, the court will also be able to deal with related summary offences at the same time. Further evidence may be called to determine the related summary offences, but if this is not feasible or efficient, the court may remit the summary offences to the Magistrates Court. Clause 145 also provides that where the prosecution and the accused agree, the Magistrates Court may decide not to transfer a related summary offence to the County or Supreme Court.

This new process treats the criminal justice system as one integrated system. It is a flexible and more efficient process and it will often be more appropriate for one court to deal with all related charges.

Chapter 5 — Trial on indictment

As I indicated earlier, many statutory provisions are developed at different times and in different places to address specific problems with the common law. This is particularly the case with trials. The Crimes (Criminal Trials) Act and the Crimes Act both apply to trials but they are not integrated. As a result, the relationship between some provisions is unclear and the governing legislation is complicated.

The bill defines when a trial commences as when 'the accused pleads not guilty on arraignment in the presence of the jury panel'. If an accused is arraigned and pleads guilty to the charge, then there is no trial because the accused has not disputed the prosecution's allegation. With no dispute, there is no issue for the jury to determine.

The bill creates a more clearly defined pretrial regime for making decisions prior to the commencement of the trial and integrates this with the directions hearing process. It removes existing limitations on when such decisions can be made, opening up the whole period between committal and trial for these purposes. Clearer processes and powers will assist the courts in managing cases more effectively and better indicate to practitioners the types of matters that can and should be determined before a trial commences. The bill provides simple, flexible and effective case management powers and procedures.

Chapter 5.5 describes orders and other decisions that a court may make. An order is one type of decision. The word 'decision' is central to the operation of the new interlocutory appeals process, which applies in relation to a 'decision' made by a trial judge. I shall discuss the interlocutory appeals process later. However, it is important to note that the interlocutory appeals process complements the objective of the new pretrial case management regime of encouraging parties to raise issues well before a trial commences.

The bill also provides:

> a new process which in certain circumstances will enable an accused to admit in writing that they are guilty of the charges in the indictment;
>
> clear and express powers to support a trial judge in assisting the jury to perform its often difficult task;
>
> a new process to enable a trial judge to accept a plea of guilty after a trial has commenced and to enter a finding that the accused is not guilty of the offence charged following a successful no case submission by the accused at the close of the prosecution case;
>
> a clear process and requirement that where there are two or more accused, if any of the accused wish to make a no case submission, they must do so at the close of the prosecution case; and
>
> that the antiquated mechanism where a person may be indicted to stand trial by a grand jury of 'at least 23 men' is abolished.

These reforms to the trial process provide clear, consistent and fair processes that will enable trials to proceed more efficiently.

Chapter 6 — Appeals and cases stated

This bill introduces the first major changes to appeals in Victoria in almost a century. The Criminal Appeals Act 1914 was based on the Criminal Appeal Act 1907 (UK). All jurisdictions in Australia and some common-law countries followed these so-called common form appeal provisions,

although the United Kingdom replaced these provisions with new appeal provisions in 1995.

(1) Appeals against conviction to the Court of Appeal

The bill simplifies the grounds of appeal against conviction, from a trial conducted in the County or Supreme Court, to the Court of Appeal.

Section 568 of the Crimes Act provides three grounds of appeal against a conviction. Where a person establishes one of the grounds of appeal, but the prosecution shows that there was no substantial miscarriage of justice, the Court of Appeal may apply a proviso and dismiss the appeal.

The grounds of appeal and the proviso were drafted approximately 100 years ago. The meaning of some words in the provision is unclear and the provision is internally inconsistent. Differing judicial interpretations of section 568 and its counterparts in other jurisdictions have arisen over the years. This occurred in the High Court decision in *Weiss v. R* (2005) 224 CLR 300, which added a level of complexity and uncertainty to the application of the provision.

The provision and recent High Court authority also do not necessarily operate on the presumption that a trial before a judge and jury was conducted fairly and in accordance with law unless the appellant shows that it was not.

The bill addresses the fundamental problems that have plagued this provision. The bill will improve the operation and application of appeals against conviction to the Court of Appeal by:

> removing the two-stage test and replacing it with a single-stage test;
>
> retaining the 'substantial miscarriage of justice' test for determining whether an appeal should be allowed or refused. This is an appropriate test for determining when an appeal should be allowed;
>
> requiring the appellant to satisfy the court that the appeal should be allowed.

The new approach will mean that errors or irregularities in the trial will result in appeals being allowed when the problem could have reasonably made a difference to the trial outcome; or if the error or irregularity was of a fundamental kind depriving the appellant of a fair trial. The appeal process will therefore operate to ensure that the accused receives a fair trial. It will also ensure that appeals will not be allowed on technical points that did not affect the outcome of the trial or the fairness of the proceeding.

(2) Appeals against sentence to the Court of Appeal

Clause 280 applies to the determination of an application for leave to appeal against sentence that is determined by a single judge of the Court of Appeal. This clause introduces a new test, which provides that leave to appeal against a sentence 'may be refused if there is no reasonable prospect that the Court of Appeal would impose a less severe sentence'. In *R v. Raad* [2006] VSCA 67 the majority of the Court of Appeal indicated that the court should not refuse leave to appeal if there is a reasonably arguable ground of appeal, even if there was no reasonable prospect of a lesser sentence being imposed. The new approach follows the approach of the minority in that case. It allows the court to apply an appropriate test based on the likelihood of an appeal being successful. This will assist the court in managing its workload. Further, if the appellant disagrees with the determination by the single judge, the person may still appeal to the Court of Appeal.

Section 568 of the Crimes Act also provides that on an appeal against sentence, the Court of Appeal must quash a sentence and substitute a different sentence if 'it thinks that a different sentence should have been passed'. However, it has been clear since the High Court decision in *House v. The Queen* (1936) 55 CLR 499 that the court's power is not unfettered; a sentence may only be set aside if there was an error in the sentencing process, which includes sentences that are manifestly excessive or manifestly inadequate. The bill embeds this error principle, making the law clearer and more accessible.

(3) Prosecution appeals against sentence

The error principle that I have just discussed will also apply to prosecution appeals against sentence in the Court of Appeal.

This bill introduces a further change to prosecution appeals against sentence. The bill provides the DPP with the power to appeal against a sentence. Despite the fact that the DPP may show that a sentence is manifestly inadequate, the appeal court may decline to increase the sentence, or reduce the amount of any increase, because of what is described as 'double jeopardy'. Clause 289 expressly provides that the 'Court of Appeal must not take into account any element of double jeopardy' involved in sentencing an offender again. The bill does not exclude other matters that may be relevant to the Court's determination of the appropriate sentence to impose, such as where the error arises from the prosecution's presentation of the case at the first sentencing hearing.

This is different from the principle of double jeopardy that a person should not be tried twice for the same offence; this bill does not affect that principle. However, because a prosecution appeal against sentence involves sentencing a person for a second time, the reasons against limiting the increase in sentence are described as involving 'double jeopardy'.

This existing common-law consideration can distort sentencing practices because the sentence imposed by the Court of Appeal will not reflect the sentence that it considers should have been imposed in the first place. This can reduce the guidance provided by Court of Appeal sentences to other courts and the effectiveness of DPP appeals against sentence.

Further, this approach does not take into account other relevant and counterbalancing policy considerations, such as the interests of the community and the victim, in the courts sentencing offenders to appropriate sentences.

(4) Interlocutory appeals and cases stated

Interlocutory appeals provide a mechanism for a trial judge's rulings to be tested on appeal before a trial starts or, in limited circumstances, during trial. An interlocutory appeal essentially brings forward an issue that may otherwise become part of a post-conviction appeal or a DPP reference following an acquittal. Typically, it deals with only one issue, unlike an appeal against conviction that may involve many issues. Because appealing after a trial has commenced inevitably interrupts the trial, stronger reasons are required to justify an interlocutory appeal during trial.

As I mentioned earlier in relation to pretrial decisions, an interlocutory appeal may be brought in certain circumstances against a 'decision' of a judge. This broad description avoids technical arguments about the nature or description of the decision in question, for example, whether the decision was a 'judgement' or 'order'. Clause 295 of the bill provides that where a decision concerns the admissibility of evidence, the decision may only be appealed where, if the evidence were ruled inadmissible, it would 'eliminate or substantially weaken the prosecution case'.

An interlocutory appeal may be brought if the judge who made the decision provides the necessary certification and the Court of Appeal provides leave to hear the appeal. The tests for certification and leave encourage the resolution of issues before a trial commences. Good preparation by the parties and case management by the court will identify most interlocutory appeal issues before a trial commences. However, there may be occasions when an issue arises during trial and there are very strong reasons for conducting an interlocutory appeal at that stage of the proceeding.

Because interlocutory appeals deal with issues early in the proceedings that might otherwise result in a successful post-conviction appeal, they can:

prevent guilty people being acquitted;

prevent innocent people from being wrongly convicted; and

prevent retrials because there was an error at the accused's trial.

As a result, interlocutory appeals can be of benefit in reducing the stress and trauma of court proceedings for victims, witnesses and the accused.

(5) Other changes to appeals

Some of the existing laws concerning whether a sentence is or may be stayed when an appeal is brought against either conviction or sentence are confusing, unclear and inaccessible. The bill clearly sets out the relevant laws and adopts different approaches for stays in appeals to the County Court and appeals to the Court of Appeal. This is because appeals to the County Court involve hearing a matter afresh and appeals to the Court of Appeal involve identifying an error.

This is the most comprehensive review of appeal provisions since the introduction of the Criminal Appeals Act 1914. In particular, it provides the Court of Appeal with new powers to utilise in its most important task of explaining the law and providing guidance to courts and the legal profession on legal issues. The bill will also assist the court in delivering justice in individual cases.

Chapter 8 — General

Chapter 8 contains important provisions that will be relevant in many criminal proceedings including when a person is required to appear in a criminal proceeding and the power of the court to adjourn a proceeding.

The bill sets out new service provisions, which provide clear processes for service on an accused and the prosecution. Sometimes personal service is essential to the fair and efficient operation of the criminal justice system. The bill provides a flexible approach to service:

by enabling modern means of electronic communication to be utilised;

by recognising that the parties may agree on other ways of effecting service.

Section 85 of the Constitution Act

Mr JENNINGS — Clause 365 of the bill provides that it is the intention of clauses 61(4) and 209(4) of this bill to alter or vary section 85 of the Constitution Act 1975. I make the following statement under section 85(5) of the Constitution Act 1975 of the reasons why it is the intention of clauses 61(4) and 209(4) of the bill to alter or vary section 85 of the Constitution Act 1975.

Clauses 61 and 209 of the bill provide the Magistrates, Children's, County and Supreme courts with the capacity to provide a sentencing indication to an accused who is considering pleading guilty. In accordance with a recommendation from the Sentencing Advisory Council in its report, *Sentence Indication and Specified Sentence Discounts*, these sections provide that a decision to give or not to give a sentence indication is final and conclusive.

A sentence indication should only be given where it is likely to be of benefit in concluding proceedings. The reason for restricting review and appeal rights against a decision to give or not to give a sentence indication is to ensure that this decision is final and the substantive proceedings, whether a trial or a plea hearing, can proceed without delay. If review and appeal rights were not restricted, they could defeat the purpose for the introduction of this scheme. Importantly, when a sentence is imposed, each party has rights of appeal against the sentence imposed.

Incorporated speech continues:

Chapter 9 — Repeals and consequential and other amendments

Chapter 9 contains amendments concerning the joint conduct of committals in the Magistrates Court and the Children's Court. Currently, a child and an adult co-accused may be tried together. Because of the special needs of children, this is only likely to occur where the Children's Court does not have jurisdiction to determine the charge summarily. The Children's Court cannot hear and determine certain serious charges such as murder and manslaughter. However, while a child and an adult may be jointly tried, they cannot have joint committal proceedings. This means that victims and witnesses may have to face two committal proceedings instead of one.

The bill provides a new process where, if the Children's Court does not have jurisdiction to hear and determine the

charge summarily, the child is aged 15 or above and the Magistrates Court and the Children's Court both consider it appropriate to do so, a joint committal proceeding of a child and adult co-accused may be conducted. If a joint committal proceeding is conducted, the Children Youth and Families Act 2005 continues to apply as far as practicable to the child. This practical solution is fair to victims, witnesses and the child accused.

It is important that the prosecution of a child or young person for a summary offence is commenced as quickly as possible in order to reduce delay-related anxiety and stress. Timely resolution of charges also increases the prospects of successfully intervening in offending behaviour. Clause 376 reduces the period within which the criminal proceeding for a summary offence must commence from 12 months to 6 months.

There are two exceptions to this reduced time limit. First, the court may allow the prosecution to commence a proceeding between 6 months and 12 months if it considers it appropriate to do so having regard to matters such as the age of the child, the seriousness of the alleged offence and the reasons why the charge was not filed within 6 months. Second, after receiving legal advice, a child may consent in writing to the filing of a summary charge at any time.

Chapter 9 of the bill contains consequential amendments where they are intimately involved with other aspects of the bill. However, further consequential provisions will be required and transitional provisions will be necessary. The government will introduce a separate bill to address those matters.

Conclusion

This bill introduces major improvements to Victoria's criminal procedure laws by overhauling existing laws and introducing substantial policy improvements. The new laws are clear, consistent, fair and accessible. The bill builds upon existing systems and introduces new procedures to create clear, efficient and flexible case management processes.

As society and the criminal justice system change, criminal procedure laws must continue to adapt to meet these new challenges. This bill provides the sound platform that we need to do this.

This bill is a major initiative of the government's justice statement to modernise our criminal justice system. It is the most comprehensive and far-reaching reform of criminal procedure in Victoria's history. It will provide Victoria with the best criminal procedure laws in Australia. This bill gives Victoria the criminal procedure laws it needs in the 21st century.

I commend this bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 12 February.

ADJOURNMENT

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the house do now adjourn.

St Paul's Cathedral, Bendigo: restoration

Ms LOVELL (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Planning. It is regarding the urgent need for funding to assist with the restoration of the heritage-listed St Paul's Cathedral in Bendigo. The action I seek from the minister is for the minister to make available a heritage grant to assist the Anglican diocese of Bendigo to raise the funding needed for the restoration of this iconic heritage building.

The Bendigo community has been both shocked and saddened by the announcement that this much-loved 140-year-old Bendigo cathedral has been forced to close due to large pieces of cement render falling from the front of the church. The closure has not only caused a disruption to services but also come as a great shock to the many couples whose wedding services were due to be celebrated at the cathedral in the coming weeks and months.

An inspection by a structural engineer has revealed major concerns and fears that the pinnacles and crosses are in danger of falling because their mortar has almost completely eroded. The stained glass windows will also need major restorative work. More will be known on the extent of the problems and works needed when the diocese receives the final engineer's report, which is due shortly.

Bendigo is a showpiece of our state where we are fortunate to have many beautiful heritage buildings that were built during the gold rush of the mid-1800s. Although these buildings were built solidly at the time, they are now 140 to 150 years old and cost an enormous amount to maintain and restore. It is estimated that the restoration of the cathedral may cost as much as $3 million. The diocese has already explored funding from the community grants program, but unfortunately it would not qualify as the grants are not available to religious or political groups. Perhaps the criteria for the grants need to be reviewed, as the church is very much a community facility.

Looking back at heritage grants over the past few years I notice that in 2006 the then Minister for Planning in the Bracks government made available a heritage grant of $250 000 for the restoration of Melbourne's Trades Hall — the hallowed ground of the Labor Party. If

Trades Hall can attract state government funding, why not St Paul's Cathedral in Bendigo?

My request of the minister is to make available a heritage grant to assist the diocese of Bendigo to raise the funding that is needed to restore this much-loved heritage-listed cathedral in Bendigo.

Lake Purrumbete: boat ramp

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Agriculture in the other place and is in relation to the boat ramp at Lake Purrumbete. At present the boat ramp at Lake Purrumbete is not in use due to the lake's low water level. Under Marine Safety Victoria's 2008–09 boating facilities and community harbours program, this government committed funding of $14 500 for the installation of a new boat ramp to cater for the low water levels.

During the initial stages of the planning to build the ramp at Hoses Rocks it was discovered that significant Aboriginal cultural heritage artefacts existed in the area and the ramp needed to be moved to a different location at the lake. The lack of a boat ramp facility has impacted greatly on the community, particularly throughout the tourist season. Surrounding townships rely on the lake to bring business to the area, and local fishing clubs use the facility regularly.

I know the minister has shown strong support for recreational fishing and the benefits it brings to our rural and regional communities, so the action I seek is for the minister to support the community and the surrounding townships and businesses at Lake Purrumbete by investing the necessary funds to construct a suitable boat ramp for the tourists and local community at Lake Purrumbete.

Wild pigs: control

Mr HALL (Eastern Victoria) — Tonight I wish to raise a matter for the attention of the Minister for Environment and Climate change concerning feral pigs. I am prompted to raise this matter by receipt of a copy of a letter that has been sent directly to the minister by my constituent Mr Paul Sykes of Gelantipy. He runs an operation called Karoonda Park, an adventure tourism activity-based camp at Gelantipy.

Mr Sykes makes the point that over the last five years in the area of his property, which borders the Snowy River National Park, he has seen an increasing number of wild pigs. This has become a real problem. It seems that while wild pigs have become a feral animal, less focus has been on them than on some other feral animals in that area — notably dogs and the like. He makes the point that the numbers of wild pigs are increasing rapidly due to the fact that pigs are prolific breeders and can have litters of 11 once or even twice a year. They also operate to the great detriment of the environment, in that they disturb the soil and also wallow in soaks and bogs in the national park area, which becomes a real problem. Wild pigs also carry a variety of diseases and parasites. He makes the valid point that the prevalence of wild pigs in the park now poses some risk to visitors to the national park area. He is concerned that there is the potential for people on the trail rides that he takes through the park to be frightened by the wild pigs in the area. When a lot of schoolchildren embark upon those sorts of ventures it becomes a real concern.

Mr Sykes is concerned that perhaps not enough effort is being made in terms of wild pig control. I spoke to an officer of the department in Omeo several years ago, and I know the department was doing some work on eliminating feral pigs at that time. But what is being done is not enough. They are growing in numbers and have become a real risk. My request to the minister is that he look into the problem and see if some more resources can be dedicated to the control of feral pigs before they become an even more significant problem in the park areas.

Lake Purrumbete: boat ramp

Mr VOGELS (Western Victoria) — I raise an issue for the Minister for Environment and Climate Change, Gavin Jennings, which is similar to that raised by Ms Tierney, as it concerns the failure of the responsible authorities, Parks Victoria and the Department of Sustainability and Environment (DSE), to deliver on promises to construct a boat ramp at Lake Purrumbete in south-western Victoria.

Early in January I attended one of country Victoria's largest protest rallies on the shores of Lake Purrumbete. According to the local papers — the Warrnambool *Standard*, the *Cobden Times* and the *Camperdown Chronicle* — an estimated 750 people attended. Yesterday in the other house my colleague Terry Mulder, the member for Polwarth, tabled a petition signed by over 1700 people who are also concerned about the lack of boat ramp facilities at Lake Purrumbete. The message at the rally was loud and clear: where is the boat ramp that was promised, so we can enjoy this wonderful facility? As stated in the Warrnambool *Standard*: 'Plenty of fish, no anglers'. Only a couple of weeks ago 45 000 trout were put into that lake.

Lake Purrumbete covers approximately 1000 acres and today still has a water depth of approximately 25 metres. It was Victoria's premier trout fishing lake, and through tourism and anglers et cetera it was worth approximately $3 million per annum to the local economy. Following 10 years of below-average rainfall the existing boat ramp is sitting high and dry some distance from the deep-water mark. Parks Victoria had promised to build a temporary boat ramp at another site, but due to heritage and planning issues did not proceed. This saga has been ongoing for a couple of years now, and I believe decisive action by the Brumby government is needed to solve this problem. According to the many locals and others present at the rally the extension of a causeway from the existing boat ramp is by far the best option. That is where the infrastructure — that is, the toilets, caravan park, kiosk and power — all exist. I am informed that except for a muddy area right near the ramp, the causeway would extend over solid sandstone to the deep-water mark. However, that is for the authorities to decide, not me.

The action I seek from the minister is that he ensure that Parks Victoria and DSE get on with the job of restoring this lake to its position as Victoria's no. 1 trout fishing lake. It is not that hard. I could name some local contractors who could build it within a week. While I am on my feet I would like to take the opportunity to congratulate the minister and Parks Victoria on the excellent job done in re-opening the Gibson Steps in the Port Campbell National Park. It is greatly appreciated by locals and tourists alike. Building Lake Purrumbete's boat ramp is simple in comparison to that job; all that is needed is common sense and goodwill. The money spent would be recouped 10 times over in no time. Government support for our fishers would be greatly appreciated, and the boost to the local economy would be approximately $3 million per annum.

Mentone beach: pollution

Mr VINEY (Eastern Victoria) — The matter I raise this evening is for the Minister for Environment and Climate Change, Gavin Jennings. I raise with him my concerns about the recent pollution of Mentone beach. My understanding is that on 2 February a sample was taken by the Environment Protection Authority that showed elevated bacteria levels at Mentone beach. The action I seek is for the minister to have the EPA investigate the matter to try to identify the source of the problem and to advise the community of the rectification of that problem.

The reason I raise the issue is that Mentone beach is a popular beach which is easily accessible by many people in the community. It is easily accessible from the Ventura bus route down Warrigal Road or the Mentone railway station as well as for the local community. I am not the only person in the house to share this concern. Apparently Mr David Davis shares this concern. I have here a press release where he calls upon Janice Munt, the member for Mordialloc in the other place, to, in his words 'come clean'. He says she 'cannot wipe her hands of the situation until beachgoers are told what happened and are sure that the coastline is safe'. It took me about 3 minutes to get a Google map search on the computer showing where Mentone beach is, and I have to inform the house that Mentone beach is in fact in the electorate of Murray Thompson, the member for Sandringham in the other place. So Mr Davis has been calling on the local member, Janice Munt, when he should have called on his own colleague in the other place.

The DEPUTY PRESIDENT — Order! When Mr Viney resumes I expect him to return to the substance of his request of the minister and not continue to take the line he has been taking in the last few moments. He has been entering into debate, mentioning other members of Parliament and commenting on opposition members, which is not in the spirit or requirements of the adjournment. I ask him to return to the substance of the matter, which is his request to the minister. Perhaps a better action might be to request that the minister swim there.

Mr VINEY — There is a bit of sensitivity on the other side.

Mrs Peulich — On a point of order, Deputy President, there is no sensitivity. I want to point out that the member jumped to an incorrect conclusion. Ms Munt, the member for Mordialloc, actually lives in the electorate of Sandringham.

The DEPUTY PRESIDENT — Order! The member has made a point of clarification. There is no point of order.

Mr VINEY — I note that this is a matter of some concern, and that is the reason for my request that the minister have the EPA investigate this matter. Mr Davis shows in his media release that he clearly shares my concern about the dangers to families and children who might be using Mentone beach. As I said, it only took me a couple of minutes to find it in a Google search — I went to school near there — and it is a pity Mr Davis does not know the electorates of his own members.

Housing: disruptive tenants

Mrs COOTE (Southern Metropolitan) — My issue is for the Minister for Housing and concerns commission housing problems in Bentleigh. It has recently been revealed that the Brumby government allowed tenants to stay in commission housing in Bentleigh for two years while neighbours were the victims of constant physical and verbal abuse from those tenants. Residents affected by troublesome public housing tenants must be compensated by the Brumby government for their suffering. Regular occurrences for Bentleigh residents living near the tenants included having their houses set on fire, having bricks and bottles thrown at their cars and houses, being threatened with repercussions if authorities were alerted and being subjected to excessive noise and abusive language. One resident said, 'We've been threatened and harassed, and it's the same with other people. The street calls them the family from hell'.

The tenants ruined the aesthetics of the street by having shopping trolleys, furniture, car batteries, toys and beer bottles scattered around their front yard. Nearby residents have been quoted as saying that an accurate description of their lives would be in-house torture treatment 24 hours a day, 7 days a week. They say that by not keeping tabs on those living in government housing the Brumby government has failed in its obligation to ensure the safety and wellbeing of Bentleigh residents. No-one deserves to fear for their safety and the safety of their loved ones whilst in their own homes.

Whilst the tenants were finally evicted and left the house in December 2008, the action I am seeking from the minister as a matter of urgency is that he ensure adequate compensation is paid to the affected neighbours who were subjected to physical and/or verbal abuse at the hands of the tenants for the ongoing pain and suffering they experienced.

Roads: Footscray tunnel

Ms HARTLAND (Western Metropolitan) — My adjournment matter is directed to the Minister for Roads and Ports and is in regard to house acquisitions for road tunnels. People in the inner western suburbs of Melbourne have been receiving letters from the state government saying that their houses may be compulsorily acquired. People who have received the letters are understandably quite upset. Around the time of the government's transport plan announcement, residents living close to the proposed tunnel entrance near Geelong Road received letters. More recently a resident from Junction Street, Seddon, brought in the same type of letter to my office.

From the pattern of possible acquisitions it is clear that the government is looking at possible locations for smokestacks as well as an entrance to and exit from the tunnel. I will be encouraging people in other streets who have received these letters to let me know so that we can band together on this issue. It is unfair of the government to drop these frightening letters in people's letterboxes and run away. It is also disingenuous of the roads and ports minister to stand up at a public meeting and say he does not know what streets the road tunnel will destroy, when the government is already warning about acquisitions. He must at least be aware of the planned scenarios. I call on the minister to release details of the planned route or routes for the road tunnel under Footscray.

Housing: Northern Metropolitan Region

Ms MIKAKOS (Northern Metropolitan) — I raise a matter for the Minister for Housing relating to both the recent Council of Australian Governments national affordable housing agreement and this week's announcement of funding by the federal government of $6.4 billion to be spent on social housing over three years as part of the nation building and jobs plan, from which Victoria will receive $1.5 billion.

I ask the Minister for Housing to ensure that the Victorian government commits some of the additional federal funding available for social housing to the Northern Metropolitan Region. In so doing I note that in light of the current global financial crisis, issues of housing affordability, homelessness and the need for more social housing have become more critical. I therefore applaud the Rudd government for its commitment and swift action to address this pressing need.

I understand that Victoria can expect to receive upwards of 5000 new units of public and social housing, and this will substantially reduce waiting periods for people on the waiting list. Victoria is already making progress on this front, with a 7.7 per cent reduction in waiting times since 1999. Furthermore, the *Report on Government Services 2009* shows that 70 per cent of total new allocations of housing goes to those in greatest need, which is above the national average of 51 per cent. Although we are making progress, the waiting times are still too long for many people and families who find themselves in difficult situations and in need of housing, particularly in the low-income suburbs of my electorate.

According to the September 2008 figures released by the Office of Housing — —

The DEPUTY PRESIDENT — Order! The member's time has expired.

Gippsland Lakes: salinity

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the Minister for Environment and Climate Change concerning Gippsland Lakes salinity. Due to long-term low flows the salinity levels of the Gippsland Lakes have been increasing, and in particular those of Lake Wellington. Subsequent to the 2007 floods we had the forcing of saline water out of Lake Wellington onto land because of high inflow over a very short period of run-off from the 2007 flood, the consequence of which has been the apparent sterilisation of large areas of public and private land.

Recently I inspected with Geoff and Philip Ronalds a large part of the Heart area directly to the east of Sale, which joins Lake Wellington around Grebe Bay and Andrew Bay, and I looked specifically at the Clydebank Morass, the new Heart Morass and the Heart Morass state game reserves and adjoining private land. The highly saline water that inundated those low-lying areas has had a toxic effect on the vegetation to the extent that all the adjoining swamp paperbark growing around the Lake Wellington rim is dying, if not being already dead, and that is due to the high salinity levels.

The reason for this is clearly low flows and increasing saline water in the lake. I am not suggesting that the minister has it within his gift to change what are some very fundamental processes of nature, but I think the minister should be informed and take a close look at what is occurring in that area.

I am talking about part of the 4000 square kilometres of wetlands adjoining the Gippsland Lakes, large parts of which are essentially being sterilised. I am concerned both for the public land, the state reserves and particularly the private land-holders, who have effectively lost large parts of their farms, in some cases 70 or 80 per cent of their paddocks. I therefore ask that the minister investigate and take action to implement a proper salinity management strategy. I would point out that there was in yesteryear a Lake Wellington salinity program, which had desirable outcomes in lowering salinity levels on land, but this is a new phenomenon; I do not think the minister's department is aware of it.

Crib Point: bitumen plant

Mr O'DONOHUE (Eastern Victoria) — I raise a matter for the attention of the Minister for Planning. It relates to the proposal from Boral to build a bitumen facility at Crib Point. I have raised this issue previously in the house and I have had discussions about it with the minister.

The history of the matter is that Boral lodged an application to build a bitumen facility at Crib Point with the Mornington Peninsula Shire Council in April 2007. After a process that matter was to be heard at the Victorian Civil and Administrative Tribunal on 28 April. Twenty days before it was to be heard the minister called in the planning application for his consideration. The minister appointed an advisory committee to examine the proposal, and I understand that process concluded on 24 September.

This issue has caused an enormous amount of angst for the Western Port community, particularly those who live in and around the township of Crib Point. The decision the minister makes with regard to this application will really determine the future direction of that township — whether it can progress with a tourism and service-based economy or whether it will develop perhaps along the traditional line in Western Port of industrialisation.

Many people are very nervous about the pending ministerial decision. It has now been over four months since the process was concluded. I know the member for Hastings in the other place has been continuously advocating on behalf of our mutual constituents to the minister and to the department. Given the effluxion of time, the action I seek from the minister is to make a decision about this application, to release in full the report from the committee he appointed, and to release the full details of whatever decision he reaches, including his reasons, so that the township can have clarity going into the future.

Duck hunting: season

Mr BARBER (Northern Metropolitan) — My adjournment matter is for the Minister for Environment and Climate Change, Mr Jennings, and it relates to the cruel and unnecessary slaughter of our native waterbirds. As background to my adjournment request I will be providing the minister with a copy of the national common position statement of Conservation, Animal and Political Groups Calling for a Permanent Ban on the Recreational Shooting of Native Waterbirds.

That group is requesting state and federal governments work together to create a national ban on the recreational shooting of native waterbirds, to amend the Environment Protection and Biodiversity Conservation Act to provide for such a ban on Ramsar sites throughout Australia and to work in cooperation with the Northern Territory and state governments to legislate for a national ban.

Since it appears to have been announced in some form that there will be a duck hunting season this year, I request that the minister provide me with the relevant — or for that matter, the irrelevant — information he may have taken into account in deciding whether the shooting season would go ahead. I would refer in particular to the annual November waterfowl counts for 2008 that his department must have conducted. Those are the ones that are run on the same wetlands each year and that last year showed there were almost no birds on these wetlands because many of them had hardly any water.

I also request the minister to provide to me any information he received from Mr Richard Kingsford — as it is the case that the results of that person's surveys are provided annually to the minister — and any other material that was put together by him, by his department or for or by the hunting advisory committee that formed part of the case for his decision, so that members of the public, who have just recently heard that the duck hunting season is to go ahead, can look at and puzzle over that decision in an attempt to understand it.

Shepparton: children's centre

Ms DARVENIZA (Northern Victoria) — I wish to raise a matter for the attention of the Minister for Children and Early Childhood Development, Maxine Morand. I raise concerns about the provision of a children's centre in Shepparton.

There has been a real baby boom in Victoria. I think I am correct in saying we have had 73 737 babies born in the 2007–08 year — a significant increase on the previous year and the year before that. I know that a number of my parliamentary colleagues, both in this place and the other place, have made a contribution to that number of children.

The Victorian government has also increased funding to enable the Shepparton council to adequately provide maternal and child health-care facilities for those babies, and particularly for families who may need extra assistance.

In the city of Greater Shepparton in 2006–07 some 909 births were notified to the local maternal and child health centre. I understand that number has increased, and that increase on the previous year is significant. The younger children make up 12.6 per cent of the city of Greater Shepparton's population; across Victoria young children make up 11.2 per cent of the population, so we have a larger proportion of children in Shepparton than in the general population. Therefore, we certainly have a need for a children's centre in Shepparton. Of local families with young children, 22.8 per cent are one-parent families. This is higher than the average across Victoria, so there are some special needs required there as well.

The specific request I have of the minister is that she provide me with details on the progress of an integrated children's centre in Shepparton which will provide services for those children in the city.

The DEPUTY PRESIDENT — Order! I am not satisfied that that represents a suitable action to be asking the minister — that is, to provide details of progress on something that presumably is already happening. I have stopped the clock to give the member an opportunity to recast the matter in terms of requesting action of the minister because, as I said, I do not think it is sufficient to request the minister to look for further details of progress. I think we need something more specific.

Ms DARVENIZA — I ask the minister to provide details on the time lines for this children's centre to be up and running and providing the services that are clearly needed for the many children in the city of Greater Shepparton.

Taxis: driver certification

Mr FINN (Western Metropolitan) — I raise a matter for the attention of the Minister for Public Transport concerning the Victorian Taxi Directorate. A constituent of mine, Mr King Osei'duro from St Albans, visited my office recently and told me how this bumbling Brumby bureaucracy is costing small business operators dearly during these times of economic hardship. My constituent has been driving taxis for over 20 years. As a taxi operator he leases his taxi plates from the owner of the plates for $2640 a month.

On 28 October last year he lost his licence for three months due to the accumulation of demerit points. He received his licence back at midnight on 27 January this year, so he is now legally allowed to drive. Obviously he could not drive a taxi during the three months for

which his licence was suspended, but he also had to pay his lease on the taxi plates at $7920 for the three months.

During the time his licence was suspended, his taxidrivers certificate expired on 10 January this year. He has since applied for his drivers certificate to be renewed and has been advised that the decision must be reviewed before his application can be approved. The taxi directorate has also told him that the review will probably take one or two months. With the cost of installing a safety screen in his cab for $1350 and the two months of leasing the taxi plates at a cost of $5280, he is looking at $6630 in expenses relating to his cab during the two months in which he will be unable to earn an income. This is on top of his having to pay $7920 to lease his taxi plates, while receiving no income between October and January. Also he still has all the living expenses for a family of six plus his mortgage repayments.

He does not have an issue with his suspension, nor does he take issue at having to pay for his lease while his licence was suspended. He understands why all these things have occurred. What he does take some exception to is the length of time it will take for one bureaucrat in the Victorian Taxi Directorate to tick off the decision made by another bureaucrat in the same organisation. He believes that, like any other member of the public, he should be able to get back to his life after his three months suspension.

I do not believe this is fair, and he does not believe it is fair. He has served his debt to society with the three months suspension. I ask the Minister for Public Transport to intervene directly in this case and to direct the bureaucrats in the Victorian Taxi Directorate to determine the outcome of my constituent's application as a matter of priority, in the interests of fairness and justice.

Public transport: rolling stock

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the Minister for Public Transport, Ms Kosky. It concerns the temperature and ventilation on the public transport system. On Wednesday of last week when it was 40-plus degrees I was travelling on the tram from St Kilda to Melbourne. The tram was overcrowded and overheated because the air conditioning was not working. On the newest trams, as members would know, the windows do not open except for very small windows at the top that can be pulled out like shutters, and they cannot be reached without standing on seats or wheel arches. I tried to open the window but could not do it. There were some very distressed passengers on the tram.

At the next stop I asked the tram driver if he could open the windows. He was not aware that the air conditioning was not working. He was able, after some considerable effort, to open a window, but the other windows in the tram remained closed because there were so many people on board he could not get down the tram to open them all. The tram continued on its journey with no ventilation. Even when the doors opened, very little air moved because of the number of people.

The issue is that the trains cannot run when the air conditioning is not working. Trams can run, but if the air conditioning fails, people become very distressed because the trams become overheated and the windows cannot be opened. We should not be relying on air conditioning to cool trams or to provide ventilation. We should be able to open the windows if the air conditioning fails during the journey.

My request is that the minister allocate funds to enable all trains and trams to have windows installed that can be opened safely to allow ventilation when air conditioning fails, and to ensure that any new trams and trains on the public transport system are similarly fitted.

Bolton Street, Eltham: upgrade

Mrs KRONBERG (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Roads and Ports. In the Eltham, Lower Plenty and Montmorency districts residents experience traffic congestion on roads that were never designed to carry the current, let alone future, volumes of passenger and articulated vehicles.

Eltham's roads need the adoption of a very sensitive approach. We have many unsealed roads and many residents prefer them like that. They also like busy roads not to have any gutters, kerbing, footpaths and so on. All of the issues related to providing visual amenity and respect for the natural environment have to be taken into consideration whenever we talk about road systems throughout the Assembly electorate of Eltham.

However, it is my understanding that whenever the question of an upgrade of Bolton Street — an integral north–south route — is raised with VicRoads, its simplistic response has been that as Bolton Street forms the boundary between the two municipalities, the Banyule and Nillumbik councils need to make a choice between the management and/or upgrade of Para Road

or Bolton Street, because they simply cannot have both of these major north–south arterial roads attended to.

In the first instance this seems to be a cynical exercise of cost-shifting to local government, and it is certainly playing two councils off against each other. The end result is that nothing is being done to relieve the growing pressures on these essential north–south routes.

I ask the minister to provide details that would give an insight into his current thinking or a copy of the plans he may have already developed for the upgrading of the roads in these districts. These roads are now major and arterial roads and would form essential feeder roads for the proposed linking up of the Metropolitan Ring-road.

Schools: Eastern Metropolitan Region

Mr ATKINSON (Eastern Metropolitan) — I wish to raise a matter with the Minister for Education in the other place. It concerns news reports that there is departmental analysis of school provision across Victoria. I understand there is a desire to close or merge a number of schools and that documentation has been prepared by the department and obviously provided to the minister and the government for further consideration.

Obviously when this sort of material is issued it is of some concern to school communities, particularly those that have not received government funding for key projects within their schools for some time or that have been struggling in terms of staffing ratios and services within those schools because of their enrolment levels. It clearly causes them some concern about the government's intentions for those communities into the future.

I seek from the Minister for Education an indication of any schools in the eastern suburbs that are subject to her plans or her department's plans for proposed closure or merger within the next two years. I specifically seek information in respect of any schools within the Assembly electorates of Mitcham and Forest Hill, given that I am aware of a number of schools there that have somewhat lower enrolments at this point in time. Most local community people believe those schools are due to experience an increase in enrolments in the future, given a number of demographic factors and issues in relation to infrastructure and so forth that impact on those areas.

I am keen to receive from the minister an indication of any schools in the eastern suburbs — particularly the electorates of Mitcham and Forest Hill — that are marked for closure or merger by her department and figure in her plans for the next two years.

Planning: Chelsea project

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Planning or, in his absence, the minister at the table, Mr Jennings. It is in relation to the government policy which is seeing planning approvals of much higher density developments being granted and, more specifically, the announcement that was made today in question time about a special relationship that is now going to be developed between the government, the Minister for Planning and the Victorian Civil and Administrative Tribunal. In excess of 1800 planning applications currently before VCAT will supposedly will be fast-tracked. This is of great concern because VCAT is supposed to independently review the merits of each case. The minister is in effect setting himself up to be judge and jury on matters that should be considered by an independent body.

Specifically there are a number of appeals that are currently lodged with VCAT. One of those I have been following closely is in Maury Road, Chelsea. Today I received a copy of a petition with in excess of 380 signatures of residents, most of them from around the Chelsea office of Ms Lindell, the Speaker in the Assembly. It is a copy of a petition that is intended for VCAT. I had to advise them that petitions may be a way of signifying concern, but attendance at VCAT is very important. My concern is that people like these are now left in limbo. What faith or confidence can they have and what prospect is there that their case, which will require a substantial amount of effort and time — and some of these people are elderly — will be considered independently?

I ask the minister to agree to meet with the 382 signatories to this petition in Chelsea. I am happy to organise and pay for a venue so that the minister can explain how this new relationship between him, as Minister for Planning, the government and the Victorian Civil and Administrative Tribunal is going to function and how they can best present their case, which involves an objection to 10 units that are going to be developed on what is essentially a single block. Admittedly it is a larger block then perhaps you or I, Deputy President, may have, but nonetheless it is an area where one house existed and there is now a proposal for 10 dwellings to be built on it. They have serious concerns that need to be considered, and they will now be at a loss as to what awaits them through that appeal process.

Mentone beach: pollution

Mr D. DAVIS (Southern Metropolitan) — My matter for the adjournment is for the attention of the Minister for Environment and Climate Change, and it relates to what Mr Viney had to say earlier on. It is about beach pollution and the issues at Mentone beach this week. I hasten to add that this is not simply about Mentone; it is about a strip of coastline. I will read from an online news article in the *Herald Sun* of 5 February, which says:

> Mentone beach has been reopened … after the state's pollution authority closed it due to 'faecal contamination' ….
>
> An EPA spokesman confirmed further testing to the 13-kilometre stretch of beach declared unsafe for swimming this morning had shown bacteria levels —

may have returned to normal.

I am not so sure, but on 2 February the Environment Protection Authority (EPA) website showed a number of significant readings of enterococci, which are a Gram-positive cocci — bacteria that exists in faeces, human included. It is a significant pathogen and a telling marker in terms of examining the level of faecal contamination in bodies of water.

It is a dangerous bug. I do not want to make any bones about that. The high level of antibiotic resistance to this bug is also of great significance. The readings reported by the EPA on its website were 5500 at Mentone and 660 at Mornington, so you can see there is quite a dispersion of the bug across the bay. Other readings were much lower.

The safe level of enterococci indicated by the EPA on its website is 500 organisms per 100 millilitres. The state environment protection policy says it is 35 organisms per 100 millilitres. I note that in the United States of America the limit is 7 colony-forming units per 100 millilitres of water, which is a much lower standard — certainly much lower than the 5500 reported by the EPA this week at Mentone.

This is a long strip of beach that involves a number of electorates: Southern Metropolitan, South Eastern Metropolitan and Eastern Victoria regions. I notice Mr Viney did not bother to mention Mornington, which is part of his electorate, and I would have thought he would be concerned about 660 as it is a significant reading. All members, Labor and Liberal, are concerned about these readings right along this strip of coastline.

The actions I seek from the minister are that he investigate this closely, report his findings to the community and also examine the standard to see whether it is adequate or whether the standard in the United States may have some merit.

Responses

Mr JENNINGS (Minister for Environment and Climate Change) — I have one written response to the adjournment matter raised by Ms Lovell on 13 November 2008. With the exception of items that I may deal with this evening, I will refer all other matters on to the appropriate minister.

Wendy Lovell raised a matter for the attention of the Minister for Planning seeking a heritage grant for St Paul's Cathedral in Bendigo.

Gayle Tierney raised a matter for the Minister for Agriculture, and John Vogels created a competitive environment by seeking my assistance regarding the same matter. I am happy to drive a result in terms of the portfolio for which I am responsible, and if the Minister for Agriculture can stump up any money in support I would be happy about it. A positive announcement of positive action on Lake Purrumbete is not far away; in fact I may have already made a premature announcement about that whilst I was sitting here, much to my disappointment! Regardless of that, I reckon the work is pretty imminent.

Peter Hall raised a matter for my attention, asking me to stalk some feral pigs in Gelantipy — or rather, to seek others to make sure that some work is undertaken to eradicate feral pigs. I will see what can be done on that.

Matt Viney raised a matter for my attention regarding Mentone beach safety. Earlier in the week the Environment Protection Authority raised some concern about levels of E. coli, which led to warnings about the appropriate — —

Mr D. Davis interjected.

Mr JENNINGS — You can wait a second, Mr Davis. The Environment Protection Authority raised the warning on 2 February, and that warning was in place for two days. I am pleased to say the point source of that material — a local sewage outlet that may have been leaking — was identified on 2 February, and the consequent action taken at the direction of the EPA has led to more appropriate and desirable readings being evident at that beach since that time.

There is a question about whether our mission as MPs is to get a result or to scare people, and this is an entry point into my discussion of Mr David Davis's

contribution. Whilst he quite rightly expects that the EPA should follow appropriate international standards — and I share his concern — it is appropriate for us to inform the community about what the real health risks may be. I do not think any of us should take glee in misrepresenting or overstating the health risks or take our eye off the ball when it comes to what our responsibilities are.

In relation to beach analysis around the bay, it is important to understand that point sources are localised. Mr Davis suggested that there are continual readings along a strip of the coastline that indicate high levels of E. coli. It is not an accurate reflection of the current circumstances or of the degree of concern people who are enjoying the bay in the summer months should feel. They should be alert to any matter of concern on the particular beach they are at, but the impression that may have been given that all the beaches along a continuous strip have high levels of E. coli is not accurate.

I am happy for the EPA to be rigorous and for that information to be conveyed appropriately. However, I do not think people in glass houses should throw stones; they should be mindful of their responsibilities, as I am. I will talk to the EPA about that process in the future.

Mr D. Davis — The international standards.

Mr JENNINGS — I mentioned that on the way through.

Andrea Coote raised a matter for the attention of the Minister for Housing regarding Office of Housing tenants in Bentleigh.

Colleen Hartland raised a matter for the attention of the Minister for Roads and Ports regarding information about the future transport plans for the western suburbs, particularly Yarraville, and seeking his intervention to ensure that information provided to local residents is accurate and timely.

Jenny Mikakos raised a matter for the attention of the Minister for Housing seeking his support to ensure that any federal funding available through the social housing program announced by the commonwealth is spent in the Northern Metropolitan Region that she represents.

Philip Davis raised a matter for my attention. He wanted to ensure that I was familiar with the risks to the reserve systems of public-private land adjacent to Lake Wellington, where those lands have been subjected to inundation of saline water and the consequences of that. I can assure him that I have already examined this area at the instigation and the orientation of the Gippsland Lakes and Catchment Task Force. I was happy to travel with them around this area late last year, so I am mindful of the issues that he has raised. Subsequently I am happy to work with the task force and the local community to see what action may be appropriate to undertake there.

Mr O'Donohue raised a matter for the attention of the Minister for Planning, seeking his early release of a decision relating to the Boral redevelopment at Crib Point and his release of the evidence that he may have used to arrive at that decision.

Mr Barber has raised a similar dynamic with me in relation to the announcement that was made yesterday about the duck season. Mr Barber presumably has seen a press release that had been issued at that time which scoped the range of the source material that I had relied on: the conversations and considerations of the department that relied on the bird surveys that he has referred to. It also relies on advice that had been provided by the Victorian Hunting Advisory Committee that has been established to administratively advise me in relation to my responsibilities under the Wildlife Act.

There is also consideration of conversations I have had with some people, the concerns of whom are not too different from those expressed in a submission he forwarded to me by a coalition against duck hunting. All this material was considered. In addition, material about the opportunities that farmers had taken to exercise their rights under the various catchment protection acts in relation to wood ducks being pests on their properties was relevant.

The cumulative effect of these pieces of advice was the announcement that was made yesterday. I am happy to have a look at the form in which that information may be either summarised for or released to Mr Barber. I have a very low expectation that the cumulative evidence that I have relied on to make my determination may satisfy him or cause him to make a similar determination. But I am happy to share the overview of that material with Mr Barber, and I am not shirking from the fact that in exercising my ministerial responsibility I think it is incumbent upon me to get a balanced decision based upon the cumulative evidence that I have described.

Kaye Darveniza raised a matter for the attention of the Minister for Children and Early Childhood Development, ultimately seeking her commitment to allocate the timing and process by which an integrated child-care centre would be created in Shepparton.

Mr Finn raised a matter for the Minister for Public Transport. I think the best that I can actually sum up is that he wants a speedy resolution of bureaucratic processes and probably that whatever those bureaucratic processes can be, focusing on the issues at hand, might assist. I will encourage the Minister for Public Transport to focus on those.

Sue Pennicuik raised a matter for the Minister for Public Transport again seeking additional funds be allocated to provide adequate air conditioning within the rolling stock operating as public transport.

Jan Kronberg raised a matter for the Minister for Roads and Ports, seeking details of his current thinking in relation to roadworks within Montmorency.

Mr Atkinson wanted the Minister for Education to provide indications of her thinking in relation to potential school closures or mergers that may be mooted within the eastern suburbs, in particular Mitcham and Forest Hill.

An interesting and recurring theme within the adjournment tonight is the level of thinking that ministers are applying to decision-making processes. That is my theme for tonight.

Inga Peulich raised a matter for the attention of the Minister for Planning, seeking that he make an appointment with 382 signatories to a petition in relation to Victorian Civil and Administrative Tribunal decisions.

Mr P. Davis — On a point of order, Deputy President, in relation to outstanding adjournment items, there are four adjournment issues on which, under sessional orders, responses should have been provided to the house last year. These matters have been outstanding well beyond the specified time limit and it was drawn to the attention of the house on 11 November last year and again on Tuesday of this week. I now raise these matters again to seek an explanation as to why responses have not been provided.

With respect to a matter raised on 5 February with the Minister for Public Transport regarding rail services on the Gippsland line, a letter was received from the minister, but there has been no formal response to the house. This was followed up with a letter seeking an explanation to the minister responsible, Minister Madden, on 15 November.

With respect to a matter raised on 9 September with the Minister for Public Transport regarding the rail level crossing at Lindenow South, a letter was received from the minister, but there has been no formal response to the house. This was followed up with a letter seeking an explanation to the minister responsible, Minister Madden, on 15 November.

With respect to a matter raised on 15 October with the Minister for Public Transport regarding the bus service to Buchan, a letter was received from the minister, but there has been no formal response to the house. This was followed up with a letter seeking an explanation to the minister responsible, Minister Madden, on 15 November.

With respect to a matter raised on 28 October with the Minister for Senior Victorians regarding rail travel for senior Victorians, there was a follow-up letter seeking an explanation to the minister responsible, Minister Jennings, on 28 November.

In addition to the matters to which I have just referred there are three adjournment issues outstanding dating from November and December last year and which I now seek under sessional orders an explanation as to why responses have not been provided: a matter raised on 12 November with the Minister for Gaming regarding gaming licences for community clubs; a matter raised on 13 November with the Minister for Public Transport regarding tourism in Gippsland, and specifically Gippsland's exclusion from V/Line's regional tourism promotion campaign; and a matter raised on 2 December with the Minister for Roads and Ports regarding crew certification for the paddle steamer *Curlip* at Orbost. I ask the minister to explain.

Mr JENNINGS — On the point of order, Deputy President, if you were following the way in which Mr Philip Davis outlined his question to me, you would have done better than I did. I might have to understand fully his question in the form that he is seeking resolution of those matters, because the way he just ran through them did not sound like a list. It confused me in relation to the construction of what he is asking me to clarify. I am happy to have a look within the form of what I understand his question to be, the explanation he is requiring and to get relevant undertakings from my colleagues if required. But given that I am somewhat confused about the range of issues, and in fact their standing from the way that he has described them, we would be here all night, I think.

The DEPUTY PRESIDENT — Order! I can assist the minister to some extent. Mr Davis, on Tuesday of this week, when the President was in the Chair, raised the matter of outstanding adjournment items that there had not been responses to, and in some cases indicated that it was possible that some members had also received responses by way of letters to their offices but

responses that had not been incorporated in *Hansard* through the Parliament, which is required under the sessional orders. His point of order is in relation to sessional order 4 and is predicated on the basis that matters raised in the adjournment debate ought to achieve a response from a minister within 30 days.

The government, on Tuesday of this week, provided an extensive number of responses to adjournment items to a number of members, and indeed the three or four matters that Mr Davis has raised tonight is a reduced list based on those he talked about on Tuesday night, so some of his concerns have been satisfied. But there are clearly still a number of outstanding matters that have not been dealt with by government ministers, all in another place — going by his comments — in satisfaction of sessional order 4. I think Mr Davis indicated the other night that there are procedures which are outlined in the sessional orders, including a motion that could be put to the house, in the event that answers are not forthcoming on the adjournment item.

On Tuesday night he indicated that was something he might well consider going forward but that he was perhaps keen now to achieve some resolution of that and to alert the government, and ministers in another place in particular, to the sessional order requirement to ensure that matters raised on the adjournment follow their proper journey through this house and not just via Australia Post to an electorate office. That way only one member is given the answer to a matter that might well have relevance or have been of interest to all members of the house.

That is the context. The minister has given an assurance that he will follow the matter up. I think that probably satisfies Mr Davis on this occasion — knowing that that action is to be taken. I think the issue then rests in that respect.

Ms Pennicuik — On a point of order, Deputy President, I think I heard the minister say I had requested the public transport minister to provide resources for air conditioning. I certainly did not. I requested that the public transport minister provide resources for windows that open on existing and future trains and trams.

The DEPUTY PRESIDENT — Order! The *Hansard* record will reflect the exact wording of the request, and the minister is quite happy to explore that matter.

The house is now adjourned.

House adjourned 5.41 p.m. until Tuesday, 24 February.